

Exhibit 1

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 - - - - -x

4 NINO MARTINENKO, on behalf of herself and
5 others similarly situated,

6 Plaintiff,

7 -against- CASE NO: 22-CV-518

8 212 STEAKHOUSE, INC., and NIKOLAY VOLPER,

9 Defendants.

10 - - - - -x

11 32 Broadway

12 New York, New York

13 October 6, 2022

14 10:40 a.m.

15 DEPOSITION of NIKOLAY VOLPER, the
16 Defendant in the above-entitled action,
17 held at the above time and place, taken
18 before Dikila Bhutia, a Shorthand Reporter
19 and Notary Public of the State of New
20 York, pursuant to the Federal Rules of
21 Civil Procedure, order and stipulations
22 between Counsel.

23 * * *

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 3 JOSEPH & KIRSCHENBAUM, LLP Attorneys for Plaintiff 4 32 Broadway New York, New York 10004 5 6 BY: MICHAEL DiGIULIO, ESQ. DENISE SCHULMAN, ESQ. 7 8 9 LAW OFFICES OF MITCHELL S. SEGAL P.C. Attorney for Defendant 1129 Northern Boulevard, Ste 404 10 Manhasset, New York 11030 11 BY: MITCHELL SEGAL, ESQ. 12 13 * * * 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 NIKOLAY VOLPER, the Witness 2 herein, having first been duly sworn by 3 the Notary Public, was examined and 4 testified as follows: 5 BY 6 THE COURT REPORTER: 7 Q. Please state your name for the 8 record. 9 A. Nikolay Volper. 10 Q. Please state your name for the 11 record. 12 A. 2447 44 Street, Astoria, New 13 York, 11103. 14 EXAMINATION BY 15 MR. DiGIULIO: 16 Q. Good morning, Mr. Volper. 17 A. Good morning. 18 Q. My name is Mike DiGiulio. I am 19 an attorney with the law firm of Joseph & 20 Kirschenbaum. I represent the plaintiff 21 in the lawsuit against yourself and the 22 212 Steakhouse Incorporated. Thank you 23 for being here today. 24 A. Thank you very much. 25 Q. I will be referring to the 212</p>
<p style="text-align: right;">Page 3</p> <p>1 STIPULATIONS 2 IT IS HEREBY STIPULATED AND AGREED, by 3 and among counsel for the respective 4 parties hereto, that the filing, sealing 5 and certification of the within deposition 6 shall be and the same are hereby waived; 7 IT IS FURTHER STIPULATED AND AGREED 8 that all objections, except as to form of 9 the question, shall be reserved to the 10 time of the trial; 11 IT IS FURTHER STIPULATED AND AGREED 12 that the within deposition may be signed 13 before any Notary Public with the same 14 force and effect as if signed and sworn to 15 before the Court. 16 * * * 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 5</p> <p>1 N. VOLPER 2 Steakhouse Incorporated as 212 Steakhouse. 3 Do you understand this? 4 A. Yes. 5 Q. Have you ever been deposed 6 before? 7 A. In the past? 8 Q. Yes. 9 A. What kind of -- can you be more 10 specific? 11 Q. Have you ever been deposed in a 12 deposition? 13 A. Yes. 14 Q. How many times? 15 A. In any business or specifically 16 for 212 Steakhouse? 17 Q. In any business. 18 MR. SEGAL: He is just saying if 19 you are familiar with the process. 20 A. Yes. 21 Q. Do you have a sense of how many 22 times you have been deposed? 23 A. Two or three times. 24 Q. As you know, from the two or 25 three times, I am going to ask you some</p>

<p style="text-align: right;">Page 6</p> <p>1 N. VOLPER</p> <p>2 questions today.</p> <p>3 A. Yes.</p> <p>4 Q. The court reporter will take</p> <p>5 down everything we say to each other</p> <p>6 because the court reporter is transcribing</p> <p>7 in this deposition. It is important that</p> <p>8 you give verbal response to all the</p> <p>9 questions. The court reporter cannot</p> <p>10 record nods or gestures. Do you</p> <p>11 understand this?</p> <p>12 A. Yes.</p> <p>13 Q. The court reporter has sworn you</p> <p>14 in. You are now answering all questions</p> <p>15 under oath. Do you understand that you</p> <p>16 have the same obligation to tell you the</p> <p>17 truth and are subject to the same</p> <p>18 penalties of perjury as if you were</p> <p>19 testifying in court?</p> <p>20 A. Yes.</p> <p>21 Q. If you don't understand my</p> <p>22 questions, please let me know and I will</p> <p>23 rephrase it. If you answer a question, I</p> <p>24 will assume you understood it. Do you</p> <p>25 understand this?</p>	<p style="text-align: right;">Page 8</p> <p>1 N. VOLPER</p> <p>2 A. Okay.</p> <p>3 Q. Do you understand that?</p> <p>4 A. Yes.</p> <p>5 Q. Similarly, during a deposition</p> <p>6 your attorney may object to my questions.</p> <p>7 However, unless he specifically instructs</p> <p>8 you not to answer the question, you must</p> <p>9 answer the question. Do you understand</p> <p>10 that?</p> <p>11 A. Yes.</p> <p>12 Q. Are you currently taking any</p> <p>13 medications or drugs that may impair your</p> <p>14 ability to testify truthfully today?</p> <p>15 A. I don't believe so.</p> <p>16 Q. Is there any other reason you</p> <p>17 may not be able to testify truthfully</p> <p>18 today?</p> <p>19 A. I don't believe so.</p> <p>20 Q. Are you currently taking any</p> <p>21 medications that may impair your memory?</p> <p>22 A. My medical record is not going</p> <p>23 to be discussed.</p> <p>24 Q. I am asking if you are on a</p> <p>25 medication that will affect your --</p>
<p style="text-align: right;">Page 7</p> <p>1 N. VOLPER</p> <p>2 A. Yes.</p> <p>3 Q. Please let me finish asking the</p> <p>4 question before you answer even if you</p> <p>5 think you know what I am going to ask.</p> <p>6 This way, the court reporter can get</p> <p>7 everything down.</p> <p>8 A. Sure.</p> <p>9 Q. If you need to take a break at</p> <p>10 any time, just let me know. I just ask</p> <p>11 that if a question is pending, you answer</p> <p>12 the question before you take a break. Do</p> <p>13 you understand this?</p> <p>14 A. Yes.</p> <p>15 Q. Similarly, you may talk to your</p> <p>16 lawyer before a question is asked and</p> <p>17 after you have answered a question but not</p> <p>18 while a question is pending. Do you</p> <p>19 understand that?</p> <p>20 A. Can you repeat?</p> <p>21 Q. Sure.</p> <p>22 You may talk to your lawyer</p> <p>23 before a question is asked or after you</p> <p>24 have answered it, but not while a question</p> <p>25 is pending.</p>	<p style="text-align: right;">Page 9</p> <p>1 N. VOLPER</p> <p>2 A. I am not medical personnel. I</p> <p>3 am not medical trained so I cannot really</p> <p>4 answer that question. Different</p> <p>5 medication for different, different</p> <p>6 people. It is very --</p> <p>7 Q. In your opinion --</p> <p>8 A. I cannot say --</p> <p>9 Q. Let me just ask a question.</p> <p>10 Okay.</p> <p>11 In your opinion is there any</p> <p>12 reason that your memory may be impaired</p> <p>13 today?</p> <p>14 A. I cannot answer that question</p> <p>15 because different medication, they have</p> <p>16 different effect different period of time.</p> <p>17 Q. Do you have any reason to</p> <p>18 believe that your memory may be impaired</p> <p>19 today?</p> <p>20 A. Do I have any reason to believe?</p> <p>21 Q. Yes.</p> <p>22 A. Well, I don't think so but we</p> <p>23 will try.</p> <p>24 Q. Great. Thank you.</p> <p>25 A. You are welcome.</p>

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<p style="text-align: right;">Page 10</p> <p>1 N. VOLPER</p> <p>2 Q. Without revealing any</p> <p>3 attorney-client privilege you have had</p> <p>4 what, if anything, did you do to prepare</p> <p>5 for this deposition?</p> <p>6 A. Nothing.</p> <p>7 Q. You haven't done anything?</p> <p>8 A. To prepare -- not really.</p> <p>9 Q. Did you meet with your attorney?</p> <p>10 A. Yes.</p> <p>11 Q. When did you meet with your</p> <p>12 attorney?</p> <p>13 A. Like two or three days ago.</p> <p>14 Q. Did you meet in person?</p> <p>15 A. Yes.</p> <p>16 Q. Where did you meet?</p> <p>17 MR. SEGAL: Excuse me. We did</p> <p>18 not meet in person.</p> <p>19 THE WITNESS: Sorry. I</p> <p>20 apologize. We were supposed to meet</p> <p>21 in person but we meet via Zoom. You</p> <p>22 see, my memory may be already affected</p> <p>23 -- some medications.</p> <p>24 MR. SEGAL: Let's try to answer</p> <p>25 the questions.</p>	<p style="text-align: right;">Page 12</p> <p>1 N. VOLPER</p> <p>2 Q. It's okay.</p> <p>3 You are testifying today on</p> <p>4 behalf of the corporation, 212 Steakhouse</p> <p>5 Incorporated, correct?</p> <p>6 A. Correct.</p> <p>7 Q. We are going to start with this</p> <p>8 exhibit.</p> <p>9 MR. DiGIULIO: I am going to ask</p> <p>10 this to be marked Exhibit 1.</p> <p>11 (Whereupon, notice of deposition</p> <p>12 was marked as Defendant's Exhibit 1</p> <p>13 for identification as of this date by</p> <p>14 the Reporter.)</p> <p>15 Q. Sir, have you seen this document</p> <p>16 before?</p> <p>17 A. I believe that's the -- notice</p> <p>18 of deposition, correct?</p> <p>19 Q. Correct. It is the notice of</p> <p>20 deposition for 212 Steakhouse</p> <p>21 Incorporated.</p> <p>22 A. Yes, I believe so.</p> <p>23 Q. Please take a look at pages 2</p> <p>24 through 4 under the section matters</p> <p>25 designated for deposition. Please review</p>
<p style="text-align: right;">Page 11</p> <p>1 N. VOLPER</p> <p>2 THE WITNESS: Yes.</p> <p>3 Q. How long was that meeting?</p> <p>4 A. Very brief.</p> <p>5 Q. Was it half an hour?</p> <p>6 A. I think it was less than that.</p> <p>7 Q. Less than that?</p> <p>8 A. Yes.</p> <p>9 Q. Did you review any documents</p> <p>10 during the meeting?</p> <p>11 A. No.</p> <p>12 Q. Have you talked with anyone else</p> <p>13 besides your attorney about this</p> <p>14 deposition?</p> <p>15 A. Besides attorney -- well, the</p> <p>16 staff obviously, the 212 Steakhouse</p> <p>17 because I have been served so they ask</p> <p>18 questions what is going on. I said we</p> <p>19 cannot --</p> <p>20 Q. Besides your attorney, did you</p> <p>21 tell anyone about this deposition today?</p> <p>22 A. The deposition today?</p> <p>23 Q. Yes.</p> <p>24 A. No, no. I'm sorry. I</p> <p>25 misunderstand the question.</p>	<p style="text-align: right;">Page 13</p> <p>1 N. VOLPER</p> <p>2 all of those matters?</p> <p>3 A. Can we stop --</p> <p>4 Q. Take your time. Pages 2 through</p> <p>5 4 for all of the matters designated for</p> <p>6 deposition.</p> <p>7 A. Okay. I am ready for question</p> <p>8 No. 1.</p> <p>9 Q. Have you been designated to</p> <p>10 testify about all of these topics on</p> <p>11 behalf of 212 Steakhouse Incorporated?</p> <p>12 A. Yes.</p> <p>13 Q. Are there any topics on this</p> <p>14 list for which you are not prepared to</p> <p>15 testify today?</p> <p>16 A. From 1 to 4?</p> <p>17 Q. Pages 2 through 4 which is No.</p> <p>18 1 through 22.</p> <p>19 A. That's a lot of questions but</p> <p>20 let's go one by one. 22 questions.</p> <p>21 MR. SEGAL: Can you repeat the</p> <p>22 question for him?</p> <p>23 MR. DiGIULIO: Sure.</p> <p>24 Q. Are there any topics on that</p> <p>25 that list, 1 through 22, for which you are</p>

<p style="text-align: right;">Page 14</p> <p>1 N. VOLPER</p> <p>2 not prepared to testify about today?</p> <p>3 A. Just give me a second. I have</p> <p>4 to review them before answering the</p> <p>5 question.</p> <p>6 Q. Please.</p> <p>7 A. Okay. I was not really involved</p> <p>8 in 212 Steakhouse for many years</p> <p>9 especially the pandemic. Some of the</p> <p>10 questions I see like plaintiff's work</p> <p>11 schedules and hours worked, I don't have</p> <p>12 knowledge of it.</p> <p>13 Q. Which number are you referring</p> <p>14 to?</p> <p>15 A. No. 2.</p> <p>16 Q. Plaintiff's work schedule and</p> <p>17 hours worked?</p> <p>18 A. Yes. Because basically, they</p> <p>19 did it himself, the staff did himself. In</p> <p>20 the last three years I have been just like</p> <p>21 few times there. I have medical reasons.</p> <p>22 Because of the COVID, I have four of the</p> <p>23 five things medical that is not</p> <p>24 recommended to get COVID.</p> <p>25 Q. Aside from No. 2, are there any</p>	<p style="text-align: right;">Page 16</p> <p>1 N. VOLPER</p> <p>2 Steakhouse Incorporated?</p> <p>3 A. It is a restaurant.</p> <p>4 Q. Is the 212 Steakhouse</p> <p>5 Incorporated a company that owned the</p> <p>6 restaurant?</p> <p>7 A. It is a restaurant. 212</p> <p>8 Steakhouse is corporation.</p> <p>9 Q. Does the corporation own a</p> <p>10 restaurant in Manhattan?</p> <p>11 A. Yes. 212 Steakhouse.</p> <p>12 Q. Does the entity 212 Steakhouse</p> <p>13 Incorporated own anything else besides the</p> <p>14 restaurant?</p> <p>15 A. No.</p> <p>16 Q. What is your relationship with</p> <p>17 212 Steakhouse the corporation?</p> <p>18 A. I am the owner. I formed the</p> <p>19 corporation.</p> <p>20 Q. Does anyone else own shares in</p> <p>21 the corporation?</p> <p>22 A. Well, in the past we have some</p> <p>23 sales which -- legally I'm not sure how</p> <p>24 the answer to this. They transferred</p> <p>25 something and they backed up from the</p>
<p style="text-align: right;">Page 15</p> <p>1 N. VOLPER</p> <p>2 other issues designated for deposition</p> <p>3 that you are not prepared to testify about</p> <p>4 today?</p> <p>5 A. I don't remember No. 5.</p> <p>6 Q. Anything else?</p> <p>7 A. No. 6. No. 7. I cannot give a</p> <p>8 definite answer to all these questions.</p> <p>9 No. 8, 9. No. 11 is terminated by PO</p> <p>10 system. No. 12. They did it themselves.</p> <p>11 I don't understand No. 13. No. 17, I have</p> <p>12 little bit knowledge. No. 18, I don't</p> <p>13 completely understand the question. I</p> <p>14 would appreciate it if you can find a</p> <p>15 different way to ask. 19, same thing. I</p> <p>16 need No. 20 to be specified in different</p> <p>17 way. I'm not sure what it is.</p> <p>18 MR. SEGAL: We will take five</p> <p>19 minutes.</p> <p>20 MR. DiGIULIO: Okay.</p> <p>21 (Whereupon, a short recess was</p> <p>22 taken.)</p> <p>23 MR. DiGIULIO: Back on the</p> <p>24 record.</p> <p>25 Q. Mr. Volper, what is 212</p>	<p style="text-align: right;">Page 17</p> <p>1 N. VOLPER</p> <p>2 deals. So I am not really sure how that's</p> <p>3 being treated but we can look at the tax</p> <p>4 returns because I can't remember.</p> <p>5 Q. In your knowledge, has anyone</p> <p>6 else at any point besides you owned a</p> <p>7 share in 212 Steakhouse?</p> <p>8 A. That's why I have to review the</p> <p>9 agreement. I don't want to answer about</p> <p>10 14, 15 pages contract. I don't remember.</p> <p>11 Q. What contract are you talking</p> <p>12 about?</p> <p>13 A. Sales contract.</p> <p>14 Q. Sales contract?</p> <p>15 A. For 212 Steakhouse.</p> <p>16 *MR. DiGIULIO: We will ask that</p> <p>17 212 Steakhouse produce all sales</p> <p>18 contracts that exist.</p> <p>19 Q. I believe you testified you</p> <p>20 opened 212 Steakhouse?</p> <p>21 A. Correct.</p> <p>22 Q. When did you open it?</p> <p>23 A. I believe it was 2013 but we</p> <p>24 start operate 2014.</p> <p>25 Q. That you stopped operating in</p>

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<p style="text-align: right;">Page 18</p> <p>1 N. VOLPER</p> <p>2 2014?</p> <p>3 MR. SEGAL: Started.</p> <p>4 Q. Started?</p> <p>5 A. Yes, yes. We formed the</p> <p>6 corporation in 2013 but it takes time to</p> <p>7 open, construction, permits and</p> <p>8 everything.</p> <p>9 Q. Great, okay.</p> <p>10 Prior to opening 212 Steakhouse</p> <p>11 did you have experience in the restaurant</p> <p>12 business?</p> <p>13 A. No.</p> <p>14 Q. No?</p> <p>15 A. No.</p> <p>16 Q. Have you owned any other</p> <p>17 restaurants before?</p> <p>18 A. No.</p> <p>19 Q. What is the restaurant's</p> <p>20 address?</p> <p>21 A. 316 East 53 Street. New York,</p> <p>22 New York 10022.</p> <p>23 Q. Has the restaurant always been</p> <p>24 located at this location?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">Page 20</p> <p>1 N. VOLPER</p> <p>2 Q. In the restaurant how many</p> <p>3 customers does the restaurant seat inside?</p> <p>4 A. How many seatings inside -- I</p> <p>5 can image about eighty.</p> <p>6 Q. Eighty?</p> <p>7 A. Yes.</p> <p>8 Q. How many tables is that?</p> <p>9 A. If you divide by two so around</p> <p>10 forty tables.</p> <p>11 Q. Before March 2020 when COVID</p> <p>12 came, did the restaurant have outdoor</p> <p>13 seating?</p> <p>14 A. Before the 2020?</p> <p>15 Q. Yes.</p> <p>16 A. No. It was not allowed.</p> <p>17 Q. Does the restaurant have outdoor</p> <p>18 seating now?</p> <p>19 A. No.</p> <p>20 Q. No?</p> <p>21 A. No.</p> <p>22 Q. Okay. You said the restaurant</p> <p>23 opened up in 2014; is that correct?</p> <p>24 A. Correct.</p> <p>25 Q. From 2014 to March of 2020 when</p>
<p style="text-align: right;">Page 19</p> <p>1 N. VOLPER</p> <p>2 Q. What kind of restaurant is it?</p> <p>3 A. It is a 212 Steakhouse.</p> <p>4 Q. Does the restaurant specialize</p> <p>5 in Kobe beef?</p> <p>6 A. Yes.</p> <p>7 Q. What is Kobe beef?</p> <p>8 A. Kobe beef is basically Wagyu</p> <p>9 beef from Japan which is very exclusive.</p> <p>10 And yeah, it is one of the premium steak</p> <p>11 meat.</p> <p>12 Q. Does the Kobe beef come from</p> <p>13 Japan?</p> <p>14 A. Yes.</p> <p>15 Q. Does the restaurant sell halal</p> <p>16 meat?</p> <p>17 A. Yes.</p> <p>18 Q. What is halal meat?</p> <p>19 A. What is halal meat?</p> <p>20 Q. Yes.</p> <p>21 A. Halal meat is it needs halal</p> <p>22 certification to become a halal meat.</p> <p>23 Q. Does the halal meat at the</p> <p>24 restaurant come from Canada?</p> <p>25 A. I believe so.</p>	<p style="text-align: right;">Page 21</p> <p>1 N. VOLPER</p> <p>2 COVID came to New York, what were the</p> <p>3 restaurant's hours of operation?</p> <p>4 A. All depends. I mean, it have to</p> <p>5 terminate because during the pandemic</p> <p>6 limited hours so it was closed.</p> <p>7 MR. SEGAL: Before, before.</p> <p>8 A. Before the pandemic usually</p> <p>9 evenings only.</p> <p>10 Q. Evenings only?</p> <p>11 A. Yes.</p> <p>12 Q. So about what time did the</p> <p>13 restaurant open?</p> <p>14 A. I think as far as I remember</p> <p>15 like 4:00 or 5:00.</p> <p>16 Q. What time did it close?</p> <p>17 A. We close usually when the last</p> <p>18 customer leaves like maybe around 11:00.</p> <p>19 Q. Did the restaurant serve lunch?</p> <p>20 A. Lunch?</p> <p>21 Q. Yes.</p> <p>22 A. We serve -- not in the</p> <p>23 beginning. In the beginning we no serve</p> <p>24 lunch. Just barely. We tried few times.</p> <p>25 It was not very successful. Then the</p>

6 (Pages 18 - 21)

<p style="text-align: right;">Page 22</p> <p>1 N. VOLPER</p> <p>2 pandemic come. I don't think we don't</p> <p>3 sell lunch, only delivery. Right now we</p> <p>4 are selling lunch.</p> <p>5 Q. Right now?</p> <p>6 A. Recently, yes.</p> <p>7 Q. I want to ask you about before</p> <p>8 the pandemic.</p> <p>9 A. Yes, sir.</p> <p>10 Q. Your testimony is -- withdrawn.</p> <p>11 In 2016 which is before the</p> <p>12 pandemic, did the restaurant serve lunch?</p> <p>13 A. 2016?</p> <p>14 Q. Yes.</p> <p>15 A. I don't remember.</p> <p>16 Q. You don't remember?</p> <p>17 A. No.</p> <p>18 Q. Okay. I believe you said that</p> <p>19 the restaurant tried to serve lunch a few</p> <p>20 times before the pandemic?</p> <p>21 A. Correct.</p> <p>22 Q. What does that mean?</p> <p>23 A. That means we try like month or</p> <p>24 two and then we stopped because it was not</p> <p>25 successful, we lose money. So we try</p>	<p style="text-align: right;">Page 24</p> <p>1 N. VOLPER</p> <p>2 on the -- I cannot really answer</p> <p>3 completely like exact dates, what periods.</p> <p>4 We have limited capacity, completely</p> <p>5 shutdown, or delivery only, or outdoor</p> <p>6 only. Depends on this period, but to give</p> <p>7 exactly dates and months -- because we was</p> <p>8 limited from the New York State.</p> <p>9 Q. I understand.</p> <p>10 Let's talk about the different</p> <p>11 phases if you will. Initially you were</p> <p>12 shut down for a period and the restaurant</p> <p>13 did not operate; is that correct?</p> <p>14 A. I think we have only delivery.</p> <p>15 Q. Okay. During the initial</p> <p>16 shutdown you still maintained a takeout or</p> <p>17 delivery option for the restaurant; is</p> <p>18 that correct?</p> <p>19 A. I think like -- just give me a</p> <p>20 second. I think it was like few months.</p> <p>21 Then it was losing money. Then I think we</p> <p>22 shut down for like -- it is tough for me</p> <p>23 to determine a period but we stopped this</p> <p>24 and we continued this. I remember because</p> <p>25 limitation from the New York State. I</p>
<p style="text-align: right;">Page 23</p> <p>1 N. VOLPER</p> <p>2 again. We changed menu, we tried</p> <p>3 different concept.</p> <p>4 Q. Do you remember when you tried</p> <p>5 to have serve lunch, what time the</p> <p>6 restaurant opened during that period?</p> <p>7 A. I believe it was 12:00.</p> <p>8 Q. Before March 2020 the restaurant</p> <p>9 tried a number of times to serve lunch</p> <p>10 throughout the years?</p> <p>11 A. Yes.</p> <p>12 Q. When they did try, you opened</p> <p>13 the restaurant for customers that knew; is</p> <p>14 that accurate?</p> <p>15 A. It is accurate, yes.</p> <p>16 Q. How did the hours change for the</p> <p>17 restaurant during the initial COVID</p> <p>18 shutdown period in March of 2020?</p> <p>19 A. You are talking about when the</p> <p>20 pandemic started?</p> <p>21 Q. Right when it hit.</p> <p>22 A. So as you know, there was -- we</p> <p>23 was completely shut down in the beginning.</p> <p>24 Q. For how long?</p> <p>25 A. For how long -- because depends</p>	<p style="text-align: right;">Page 25</p> <p>1 N. VOLPER</p> <p>2 remember some of them -- which they don't</p> <p>3 allow indoor dining, only outside dining.</p> <p>4 We build outside dining.</p> <p>5 Q. When did you build outdoor</p> <p>6 dining?</p> <p>7 A. During that period of time but I</p> <p>8 don't have specific dates because I was</p> <p>9 not involved. As I mentioned, during the</p> <p>10 pandemic especially I avoid because I was</p> <p>11 scared catching COVID.</p> <p>12 Q. Who was in charge at the</p> <p>13 restaurant during this period?</p> <p>14 A. During this period most of the</p> <p>15 like staff including plaintiff was in</p> <p>16 charge. They did their own scheduling,</p> <p>17 you know, shifts. They calculate the</p> <p>18 tips. Pretty much everything was between</p> <p>19 the staff because I was absent. I was</p> <p>20 afraid during the --</p> <p>21 Q. During the initial COVID</p> <p>22 shutdown you let the staff of the</p> <p>23 restaurant manage the operations of the</p> <p>24 restaurant?</p> <p>25 A. Correct.</p>

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<p style="text-align: right;">Page 26</p> <p>1 N. VOLPER</p> <p>2 Q. Was there anyone else?</p> <p>3 MS. SCHULMAN: Let's take a</p> <p>4 short break.</p> <p>5 THE WITNESS: Thank you.</p> <p>6 (Whereupon, a short recess was</p> <p>7 taken.)</p> <p>8 MR. DiGIULIO: Back on the</p> <p>9 record.</p> <p>10 Q. I believe you testified that the</p> <p>11 restaurant currently does not have outdoor</p> <p>12 dining; is that right?</p> <p>13 A. Currently, no.</p> <p>14 Q. When did the restaurant stop</p> <p>15 having outdoor dining?</p> <p>16 A. Maybe like around a year ago.</p> <p>17 Q. About the fall of 2021?</p> <p>18 A. As far as I remember, yes.</p> <p>19 Q. What are the current hours of</p> <p>20 operation for the restaurant?</p> <p>21 A. The current noon.</p> <p>22 Q. Is that noon?</p> <p>23 A. Noon, yes. Noon until we have</p> <p>24 customers -- usually it is like 11:00.</p> <p>25 Q. Is that five days a week --</p>	<p style="text-align: right;">Page 28</p> <p>1 N. VOLPER</p> <p>2 Q. And then when the restaurant</p> <p>3 opened back up and had outdoor dining, did</p> <p>4 the restaurant hire new front-of-house</p> <p>5 staff?</p> <p>6 A. Yes.</p> <p>7 Q. Were the individuals who were</p> <p>8 working before rehired?</p> <p>9 A. We contact all individuals that</p> <p>10 they want to come back. Some of them,</p> <p>11 they don't want to come back.</p> <p>12 Q. Who did you rehire when you</p> <p>13 reopened for outdoor dining?</p> <p>14 A. Uh --</p> <p>15 MR. SEGAL: For outdoor dining?</p> <p>16 A. Okay. Outdoor specifically.</p> <p>17 Q. There is a period I believe the</p> <p>18 restaurant was open just for outdoor</p> <p>19 dining?</p> <p>20 A. As far as I remember was</p> <p>21 Lychezar Lazarov. I think --</p> <p>22 Q. What position did they hold?</p> <p>23 A. Like waiter. I think that</p> <p>24 period of time if I am not mistaken,</p> <p>25 Dagmara was coming. Also Alexander -- I</p>
<p style="text-align: right;">Page 27</p> <p>1 N. VOLPER</p> <p>2 strike that.</p> <p>3 Is that seven days a week?</p> <p>4 A. Yes.</p> <p>5 Q. How long has that been the</p> <p>6 restaurant's hours of operation?</p> <p>7 A. We just recently opened lunch.</p> <p>8 Let me see. I will try to remember.</p> <p>9 Maybe like few months back, like four to</p> <p>10 six months back, something like that.</p> <p>11 Q. What is the lounge?</p> <p>12 MR. SEGAL: He said lunch.</p> <p>13 THE WITNESS: Sorry. My English</p> <p>14 is not very proficient.</p> <p>15 Q. It's okay. Prior to four to six</p> <p>16 months ago?</p> <p>17 A. Again, I cannot just give exact</p> <p>18 date but that's my best -- best of my</p> <p>19 knowledge.</p> <p>20 Q. When the restaurant closed</p> <p>21 initially in March of 2020, did the</p> <p>22 restaurant continue to employ</p> <p>23 front-of-house staff?</p> <p>24 A. Not that I remember because it</p> <p>25 was shut down.</p>	<p style="text-align: right;">Page 29</p> <p>1 N. VOLPER</p> <p>2 forget his last name.</p> <p>3 Q. He was a waiter?</p> <p>4 A. Yes.</p> <p>5 Q. Another Alexander. So they both</p> <p>6 Alexander, Rynkovsky I believe.</p> <p>7 Q. You said there were some</p> <p>8 employees that you contacted you didn't</p> <p>9 want to come back; is that right?</p> <p>10 A. We contacted all of them, but</p> <p>11 some they don't even reply to us.</p> <p>12 Q. Do you remember who?</p> <p>13 A. Do I remember who -- no. I</p> <p>14 mean, I know the Chef Nelson. No. Pretty</p> <p>15 much -- I don't remember who exactly in</p> <p>16 that period of time.</p> <p>17 Q. But Chef Nelson didn't come</p> <p>18 back?</p> <p>19 A. Chef Nelson didn't come back.</p> <p>20 Q. About how many individuals chose</p> <p>21 not to come back?</p> <p>22 A. I cannot speculate but maybe</p> <p>23 about five, six, something like that. We</p> <p>24 are not big operation.</p> <p>25 Q. This is five, six employees that</p>

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<p style="text-align: right;">Page 30</p> <p>1 N. VOLPER</p> <p>2 counts both the back of the house and the</p> <p>3 front of the house?</p> <p>4 A. Maybe little bit more in front</p> <p>5 of the house.</p> <p>6 Q. So seventy ten?</p> <p>7 A. Something like that, yes, in</p> <p>8 that range.</p> <p>9 Q. Do you have a title for your</p> <p>10 role at the restaurant?</p> <p>11 A. Official title?</p> <p>12 Q. Yes.</p> <p>13 A. Not really.</p> <p>14 Q. How often are you at the</p> <p>15 restaurant?</p> <p>16 A. In the last -- during the</p> <p>17 pandemic not very often. Not very often</p> <p>18 at all.</p> <p>19 Q. Before the pandemic how often</p> <p>20 were you at the restaurant?</p> <p>21 A. Like monthly or weekly or --</p> <p>22 maybe like five to seven times a month,</p> <p>23 something like that.</p> <p>24 Q. When you were at the restaurant</p> <p>25 what did you do?</p>	<p style="text-align: right;">Page 32</p> <p>1 N. VOLPER</p> <p>2 Q. During COVID did you go to the</p> <p>3 restaurant at all?</p> <p>4 A. Not much, not really much</p> <p>5 because again, I was afraid.</p> <p>6 Q. When did you start going back to</p> <p>7 the restaurant regularly?</p> <p>8 A. Well, I start going basically</p> <p>9 like more often because it was getting</p> <p>10 busy in the month of December because</p> <p>11 that's our busiest time. Then many --</p> <p>12 yeah, that was like the most time.</p> <p>13 Q. Is this December of 2020?</p> <p>14 A. Yeah, that was December of 2020.</p> <p>15 Yes, I believe so. I started to be there</p> <p>16 more often because the restaurant is</p> <p>17 getting busier. I think we went to fifty</p> <p>18 percent capacity or something. I don't</p> <p>19 remember exactly. Then was a lot of</p> <p>20 restrictions. I want to make sure</p> <p>21 mandatory vaccination for employees.</p> <p>22 Complying with the laws, I want to make</p> <p>23 sure everything is okay because of that.</p> <p>24 Q. After you returned to be at the</p> <p>25 restaurant more regularly, how often where</p>
<p style="text-align: right;">Page 31</p> <p>1 N. VOLPER</p> <p>2 A. What I do in the restaurant?</p> <p>3 Q. Yes.</p> <p>4 A. Well, I want to make sure the</p> <p>5 service is good like, you know, basically</p> <p>6 we have all the vendors like -- prepare,</p> <p>7 the food is good, everything is in the</p> <p>8 menu. I want to make sure the staff is</p> <p>9 like, you know, will follow the -- follow</p> <p>10 any COVID restrictions and policies</p> <p>11 because that was pretty strict. We have</p> <p>12 to make sure we don't violate any policy</p> <p>13 related to COVID imposed by the New York</p> <p>14 State.</p> <p>15 Q. Before COVID happened that</p> <p>16 wasn't something you did, right?</p> <p>17 A. Before COVID, no, no.</p> <p>18 Q. Before COVID, that was my</p> <p>19 question. What did you do at the</p> <p>20 restaurant besides the things you just</p> <p>21 testified about?</p> <p>22 A. Yeah, some of those things.</p> <p>23 Q. You instruct certain employees</p> <p>24 about how to do their job?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 33</p> <p>1 N. VOLPER</p> <p>2 you at the restaurant?</p> <p>3 A. Pretty much every other day.</p> <p>4 Q. Before COVID you were there five</p> <p>5 to seven times a week and when you came</p> <p>6 back --</p> <p>7 A. Five to seven times a week you</p> <p>8 said?</p> <p>9 Q. A month you said, right?</p> <p>10 A. Not even that. Very brief.</p> <p>11 Three, four times maybe.</p> <p>12 Q. But more recently starting in</p> <p>13 December of 2020 you were there every</p> <p>14 other day?</p> <p>15 A. Yeah. For the reason I already</p> <p>16 described.</p> <p>17 Q. Do you still go to the</p> <p>18 restaurant about every other day?</p> <p>19 A. Right now?</p> <p>20 Q. Yes.</p> <p>21 A. Yes. Right now, yes. I am</p> <p>22 fully vaccinated. I feel much more</p> <p>23 comfortable to go there, yes.</p> <p>24 Q. Are you the ultimate decision</p> <p>25 maker at the restaurant?</p>

<p style="text-align: right;">Page 34</p> <p>1 N. VOLPER</p> <p>2 A. Yes.</p> <p>3 Q. Do you hire employees?</p> <p>4 A. I hire some employees, yes.</p> <p>5 Q. Which employees have you hired?</p> <p>6 A. Recently or during the --</p> <p>7 Q. During the entire time if you</p> <p>8 can please name some employees that you</p> <p>9 have hired?</p> <p>10 A. Okay.</p> <p>11 MR. SEGAL: Objection. You can</p> <p>12 answer.</p> <p>13 Q. You can answer.</p> <p>14 MR. SEGAL: You can answer.</p> <p>15 A. As far as I remember -- let's</p> <p>16 see. Dagmar for sure because that's</p> <p>17 pretty much recently, Chef Nelson. He is</p> <p>18 no longer with us but -- let's see. I</p> <p>19 believe Alexander Rynkovsky. Yeah, I am</p> <p>20 pretty sure -- again. Long time ago.</p> <p>21 Yeah, probably few more people, yes.</p> <p>22 Q. Do you fire employees?</p> <p>23 A. Yes.</p> <p>24 Q. Did you fire the plaintiff, Ms.</p> <p>25 Martinenko?</p>	<p style="text-align: right;">Page 36</p> <p>1 N. VOLPER</p> <p>2 Q. You mentioned the employee</p> <p>3 Alexander Rynkovsky?</p> <p>4 A. Yes.</p> <p>5 Q. Is he server at the restaurant?</p> <p>6 A. Yes.</p> <p>7 Q. Was he ever promoted to captain?</p> <p>8 A. Rynkovsky, no. Alexander, I</p> <p>9 think Alex -- or something like that was</p> <p>10 promoted to captain.</p> <p>11 Q. What is a captain?</p> <p>12 A. Captain is like basically a</p> <p>13 person who is little bit higher level. As</p> <p>14 long as my basic knowledge of that is with</p> <p>15 high level above waiter or waitress which</p> <p>16 is more professional, more taking care of</p> <p>17 service, make sure service is good.</p> <p>18 Basically like more professional, person</p> <p>19 with lot of years of experience and</p> <p>20 knowledge.</p> <p>21 Q. Did you promote this person</p> <p>22 Alexander, the other Alexander to captain?</p> <p>23 A. Yes.</p> <p>24 Q. You did?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 35</p> <p>1 N. VOLPER</p> <p>2 A. Yes.</p> <p>3 Q. Who replaced Nino Martinenko</p> <p>4 after she was fired?</p> <p>5 A. Who replaced -- because it was</p> <p>6 getting like more busy so basically we</p> <p>7 have few additional employees. No</p> <p>8 specific somebody to be at her place. It</p> <p>9 is just we started to be busy.</p> <p>10 Q. Did you these additional people?</p> <p>11 A. Let me think. I don't believe I</p> <p>12 did.</p> <p>13 Q. Who did then?</p> <p>14 A. Basically, the staff. I</p> <p>15 remember one particular case. Actually,</p> <p>16 yes, yes. For sure I have a person. It</p> <p>17 is a lady. Her name is -- I am bad with</p> <p>18 names. Hailey. I hired her.</p> <p>19 Q. What position was Hailey?</p> <p>20 A. Front of house.</p> <p>21 Q. Server, waiter?</p> <p>22 A. Yeah, yeah. Front of house.</p> <p>23 Q. Do you have the authority to</p> <p>24 discipline employees?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 37</p> <p>1 N. VOLPER</p> <p>2 Q. Okay. Was this person ever</p> <p>3 demoted back to being a server?</p> <p>4 A. Yes.</p> <p>5 Q. Why was he demoted?</p> <p>6 A. I'm not sure demoted.</p> <p>7 MR. SEGAL: You made him a</p> <p>8 captain. Did you push him back down</p> <p>9 to being just a front-of-house waiter?</p> <p>10 A. Yes. I'm sorry, I didn't</p> <p>11 understand the question.</p> <p>12 Q. It's okay.</p> <p>13 Why did you do that?</p> <p>14 A. Why?</p> <p>15 Q. Yes.</p> <p>16 A. Because there was a specific</p> <p>17 case that bring to my attention that he is</p> <p>18 flirting with one of the girls. In my</p> <p>19 opinion that was not very professional so</p> <p>20 I demoted him, yes.</p> <p>21 Q. Aside from this person, have you</p> <p>22 ever disciplined any other employee at the</p> <p>23 restaurant?</p> <p>24 A. Yes, of course. Maybe I</p> <p>25 suspended like a few days or anything like</p>

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<p style="text-align: right;">Page 38</p> <p>1 N. VOLPER</p> <p>2 that. Depends on the nature.</p> <p>3 Q. Who sets the employee salaries</p> <p>4 at the restaurant?</p> <p>5 A. Who set the employee salary?</p> <p>6 Q. Yes.</p> <p>7 A. Well, the tip employees or, you</p> <p>8 know, obviously the New York State set up</p> <p>9 requirements.</p> <p>10 Q. You paid tip employees minimum</p> <p>11 wage for tips to service workers?</p> <p>12 A. Yes.</p> <p>13 Q. And that was the entire time the</p> <p>14 restaurant was open?</p> <p>15 A. The entire time, yes, as far as</p> <p>16 I remember. I mean, it is very long</p> <p>17 period of time but as far as I remember.</p> <p>18 Q. Who set the employees schedules</p> <p>19 at the restaurant?</p> <p>20 A. Most of the time they did</p> <p>21 themselves.</p> <p>22 Q. Who set the back of house</p> <p>23 salaries?</p> <p>24 A. Who set the back of the house</p> <p>25 salary?</p>	<p style="text-align: right;">Page 40</p> <p>1 N. VOLPER</p> <p>2 A. I mean, if it is -- not</p> <p>3 everything they have to do. What is</p> <p>4 appropriate.</p> <p>5 Q. Fair enough.</p> <p>6 But if it is within the scope of</p> <p>7 their job duties you tell them to do what</p> <p>8 they have to do, correct?</p> <p>9 A. Correct.</p> <p>10 Q. Who is responsible for running</p> <p>11 payroll at the restaurant?</p> <p>12 A. Who is responsible -- most of</p> <p>13 the staff determine to do their own</p> <p>14 especially in the last few years like</p> <p>15 payroll records and all this stuff, tips.</p> <p>16 I was not engaged in that at all.</p> <p>17 Q. How is payroll run?</p> <p>18 A. What do you mean?</p> <p>19 Q. How are the employees paid?</p> <p>20 A. They are paid by check,</p> <p>21 deduction from the --</p> <p>22 Q. You testified that the</p> <p>23 front-of-house gets paid tip credit</p> <p>24 minimum wage, correct?</p> <p>25 A. I assume, yes.</p>
<p style="text-align: right;">Page 39</p> <p>1 N. VOLPER</p> <p>2 Q. Yes.</p> <p>3 A. Me obviously, because they vary.</p> <p>4 They are not like required -- minimum wage</p> <p>5 can be much more.</p> <p>6 Q. You made those decisions what</p> <p>7 people will be paid?</p> <p>8 A. Yeah. I mean, most of the time.</p> <p>9 Sometimes the chef take that decision.</p> <p>10 When I was absent the chef hire people,</p> <p>11 you know. Chef Nelson will hire, you</p> <p>12 know, he decided based on the knowledge of</p> <p>13 the skills.</p> <p>14 Q. Who sets the employee schedules</p> <p>15 at the back house?</p> <p>16 A. Not me. No, it was not me. Not</p> <p>17 me. Basically the chef.</p> <p>18 Q. Can you approve an employee's</p> <p>19 request for time off?</p> <p>20 A. Yes.</p> <p>21 Q. Did you, in fact, do that?</p> <p>22 A. Yes. I did few times. Yes.</p> <p>23 Q. If you are at the restaurant and</p> <p>24 you tell an employee to do something, they</p> <p>25 have do do it, right?</p>	<p style="text-align: right;">Page 41</p> <p>1 N. VOLPER</p> <p>2 Q. That's an hourly wage, right?</p> <p>3 A. Yes.</p> <p>4 Q. All the front-of-house employees</p> <p>5 gets paid --</p> <p>6 A. Hourly plus tip.</p> <p>7 Q. How does the restaurant keep</p> <p>8 track of the hours that the employees</p> <p>9 work?</p> <p>10 A. We have a POS system basically</p> <p>11 checking the hours.</p> <p>12 Q. The restaurant requires the</p> <p>13 employees to clock in and out?</p> <p>14 A. Correct.</p> <p>15 Q. What does the restaurant do with</p> <p>16 those time records?</p> <p>17 A. They are in the system. We just</p> <p>18 use them.</p> <p>19 Q. Do you use them to calculate how</p> <p>20 much to pay each employee?</p> <p>21 A. It is not set up like that, how</p> <p>22 much to pay. Only time records.</p> <p>23 MR. SEGAL: What he is asking is</p> <p>24 those hours, do you use those to</p> <p>25 calculate their weekly pay?</p>

<p style="text-align: right;">Page 42</p> <p>1 N. VOLPER</p> <p>2 THE WITNESS: Correct. I'm</p> <p>3 sorry.</p> <p>4 MR. SEGAL: That's why I am</p> <p>5 helping.</p> <p>6 Q. What is that process? Who takes</p> <p>7 the time records from the POS system?</p> <p>8 A. Most of the time like the staff,</p> <p>9 they determine and, you know, they did it.</p> <p>10 I was absent as I mentioned. I was not</p> <p>11 involved in all this stuff. That's</p> <p>12 including Nino Martinenko by the way. She</p> <p>13 writes her own checks, determined her own</p> <p>14 hours. There was trust in employees. I</p> <p>15 didn't have really doubt somebody cheat on</p> <p>16 the hours, or tips, or anything like that.</p> <p>17 Q. Who would take the time records</p> <p>18 out of the POS system in order to</p> <p>19 calculate how much to pay the employees?</p> <p>20 A. Depends who is there, you know.</p> <p>21 I don't know exactly. Depends who is</p> <p>22 there.</p> <p>23 Q. Is there anyone else besides an</p> <p>24 employee of the restaurant that is</p> <p>25 involved with making sure the employees</p>	<p style="text-align: right;">Page 44</p> <p>1 N. VOLPER</p> <p>2 Once you set up the hours, it is</p> <p>3 automatic document. So now employees,</p> <p>4 they have to provide tips, like</p> <p>5 everybody collect tips. I'm not sure</p> <p>6 if they provide tips credits, tip</p> <p>7 employees. Yes, that's the way.</p> <p>8 MR. SEGAL: Who is writing the</p> <p>9 checks?</p> <p>10 THE WITNESS: The checks, I am</p> <p>11 writing. Most of the employees write</p> <p>12 checks. Nino Martinenko also write</p> <p>13 her own check or Alexander. I can't</p> <p>14 remember.</p> <p>15 Q. Has the restaurant ever used ADP</p> <p>16 or payroll service to process the payroll?</p> <p>17 A. No. We using like accounting</p> <p>18 company.</p> <p>19 Q. Sure. What accounting company?</p> <p>20 A. It is Crow; C-R-O-W, something.</p> <p>21 MS. SCHULMAN: With N?</p> <p>22 THE WITNESS: I don't think.</p> <p>23 C-R-O-W.</p> <p>24 Q. Is this accounting company</p> <p>25 involved with the weekly issuance of</p>
<p style="text-align: right;">Page 43</p> <p>1 N. VOLPER</p> <p>2 get paid?</p> <p>3 A. Yes. Yes, of course.</p> <p>4 Q. Who?</p> <p>5 A. A friend of mine.</p> <p>6 Q. Who is that?</p> <p>7 A. His name is Imran?</p> <p>8 Q. What is his role?</p> <p>9 A. He is helping me basically to</p> <p>10 do, you know, we involved in different</p> <p>11 things with him. Basically, I was really</p> <p>12 afraid to go to the restaurant during that</p> <p>13 period of time and he helped me a lot in</p> <p>14 terms of sometimes delivery, sometimes,</p> <p>15 you know, for whatever to do,</p> <p>16 communication.</p> <p>17 MR. SEGAL: Let's try to answer</p> <p>18 the question. He is asking about</p> <p>19 payroll. He is asking who calculates</p> <p>20 the time sheets.</p> <p>21 THE WITNESS: It is --</p> <p>22 MR. SEGAL: Is Imran doing it,</p> <p>23 is someone else doing it?</p> <p>24 THE WITNESS: It is automatic</p> <p>25 calculation by the payroll system.</p>	<p style="text-align: right;">Page 45</p> <p>1 N. VOLPER</p> <p>2 checks?</p> <p>3 A. Correct.</p> <p>4 Q. What is your understanding of</p> <p>5 Crow's involvement with making sure that</p> <p>6 the restaurant pays --</p> <p>7 A. Basically, they determine</p> <p>8 deduction New York State. The deduction</p> <p>9 required by law, they have to take from</p> <p>10 the payroll checks. Insurance, pension</p> <p>11 something, New York State. The deduction</p> <p>12 basically.</p> <p>13 Q. Does someone at the restaurant</p> <p>14 send the time records to Crow in order for</p> <p>15 Crow to calculate how much the employee</p> <p>16 earns and how much the deductions are?</p> <p>17 A. Correct.</p> <p>18 Q. Who sends the time records to</p> <p>19 Crow?</p> <p>20 A. Most of the time I believe was</p> <p>21 Imran.</p> <p>22 Q. Is Imran responsible for taking</p> <p>23 the time records from the restaurant,</p> <p>24 sending it to Crow and managing the</p> <p>25 issuance of the checks of the restaurant?</p>

<p style="text-align: right;">Page 46</p> <p>1 N. VOLPER</p> <p>2 A. Most of the time, yes.</p> <p>3 Sometimes other people was involved.</p> <p>4 Q. Who signs, I believe you</p> <p>5 testified to this but does 212 Steakhouse</p> <p>6 pay its employees by handwritten check</p> <p>7 from a checking account?</p> <p>8 A. Correct.</p> <p>9 Q. Is that Bank of America account?</p> <p>10 A. Yes.</p> <p>11 Q. Has that been the case from 2016</p> <p>12 to the present?</p> <p>13 A. I believe so. Maybe different</p> <p>14 accounts but I think still was the same</p> <p>15 bank.</p> <p>16 Q. Who writes the checks?</p> <p>17 A. As I mentioned in my previous</p> <p>18 testimony few seconds ago, most of the</p> <p>19 time the staff did including Nino</p> <p>20 Martinenko.</p> <p>21 Q. How do they now how much to</p> <p>22 write on the check?</p> <p>23 A. They have basically access to</p> <p>24 everything so -- the POS system. They can</p> <p>25 calculate the hours, you know, the tips.</p>	<p style="text-align: right;">Page 48</p> <p>1 N. VOLPER</p> <p>2 you mean like their Social Security or</p> <p>3 driver's license something like that?</p> <p>4 Q. Do you maintain a collection of</p> <p>5 documents that respond to each of the</p> <p>6 employees of the restaurant?</p> <p>7 A. Like what kind of -- like</p> <p>8 driver's license or?</p> <p>9 Q. Any documents related to the</p> <p>10 employees.</p> <p>11 A. I think we may have few.</p> <p>12 Q. Where are they kept?</p> <p>13 A. In the restaurant but I'm not</p> <p>14 sure if -- I looked the last time and I</p> <p>15 don't find anything. So far not</p> <p>16 successful to believe to find like</p> <p>17 personnel -- like personnel documentation.</p> <p>18 Q. Are the ones that the restaurant</p> <p>19 maintains kept in paper copies?</p> <p>20 A. Different documents, they are</p> <p>21 pretty much in paper. That includes</p> <p>22 invoices from vendors, tips credit.</p> <p>23 Pretty much everything in paper, yes. All</p> <p>24 different documents in paper, yes.</p> <p>25 Q. Does the restaurant have an</p>
<p style="text-align: right;">Page 47</p> <p>1 N. VOLPER</p> <p>2 That's pretty much it.</p> <p>3 Q. Who signs the checks?</p> <p>4 A. I already respond. Most of the</p> <p>5 time the staff did.</p> <p>6 Q. The staff would sign the check</p> <p>7 on behalf of you --</p> <p>8 A. Sometimes Imran, sometimes</p> <p>9 Alexander. I was pretty much not signing.</p> <p>10 Q. Who has authority to sign checks</p> <p>11 on behalf of 212 Steakhouse Incorporated?</p> <p>12 A. Like, I mean what kind of</p> <p>13 authority? Nino Martinenko have my verbal</p> <p>14 authority but not anything in paper or</p> <p>15 anything like that.</p> <p>16 Q. Can you sign checks on behalf of</p> <p>17 212 Steakhouse Incorporated?</p> <p>18 A. Yes.</p> <p>19 Q. Did you give the authority to</p> <p>20 sign checks on behalf of 212 Steakhouse</p> <p>21 Incorporated to these other employees?</p> <p>22 A. Correct.</p> <p>23 Q. Does the restaurant maintain</p> <p>24 personnel files for employees?</p> <p>25 A. I think we -- by personnel file</p>	<p style="text-align: right;">Page 49</p> <p>1 N. VOLPER</p> <p>2 office?</p> <p>3 A. Like we have like a small room</p> <p>4 inside the restaurant.</p> <p>5 Q. What is in the office in the</p> <p>6 small room?</p> <p>7 A. We have safe deposit box. We</p> <p>8 have a small desk. We have a computer.</p> <p>9 You know, normal like pens, papers, normal</p> <p>10 office stuff.</p> <p>11 Q. For any personnel files that the</p> <p>12 restaurant maintains, who is in charge of</p> <p>13 maintaining them?</p> <p>14 A. Basically, they did it. I was</p> <p>15 not involved in that. Like collecting any</p> <p>16 -- or maybe I was involved in the</p> <p>17 beginning maybe like seven, eight years</p> <p>18 ago or six and a half years ago. But I</p> <p>19 don't remember being very involved. I</p> <p>20 think the staff just -- somebody usually</p> <p>21 gives tasks to somebody can you please</p> <p>22 collect the papers. One of the staff</p> <p>23 tasks to collect everybody -- like because</p> <p>24 become a law. Everybody have to be</p> <p>25 vaccinated in order to work in the</p>

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<p style="text-align: right;">Page 50</p> <p>1 N. VOLPER</p> <p>2 hospitality industry. I give a lot of</p> <p>3 tasks to her to collect from everybody the</p> <p>4 vaccination records to make sure they are</p> <p>5 all eligible to work under the current</p> <p>6 state law.</p> <p>7 Q. From 2016 to the present, has</p> <p>8 the restaurant had any managers?</p> <p>9 A. I don't believe so, no. I think</p> <p>10 we may have, maybe in the beginning.</p> <p>11 Maybe like 2014 but -- no, I don't believe</p> <p>12 so. No, I don't remember. We have maybe</p> <p>13 like a week or two, something like that</p> <p>14 because it was like out of money so we</p> <p>15 cannot really afford management salaries.</p> <p>16 Q. I believe you testified about an</p> <p>17 individual named Imran Sajid, correct?</p> <p>18 A. Yes.</p> <p>19 Q. Does he work for the restaurant?</p> <p>20 A. He helped me but not really he</p> <p>21 didn't join salary.</p> <p>22 Q. Is he an investor in the</p> <p>23 restaurant?</p> <p>24 A. No.</p> <p>25 Q. Does he have an ownership stake</p>	<p style="text-align: right;">Page 52</p> <p>1 N. VOLPER</p> <p>2 THE WITNESS: But I think we</p> <p>3 provided that, Mitch. I think we</p> <p>4 provided that.</p> <p>5 Q. That's fine.</p> <p>6 Who are Mr. Sajid's duties and</p> <p>7 responsibilities with respect to the</p> <p>8 restaurant?</p> <p>9 MR. SEGAL: How do you spell his</p> <p>10 last name?</p> <p>11 MR. DiGIULIO: I believe it is</p> <p>12 S-A-J-I-D.</p> <p>13 MR. SEGAL: I-M-R-A-N?</p> <p>14 MR. DiGIULIO: Yes.</p> <p>15 Q. What are his duties and</p> <p>16 responsibilities with respect to the</p> <p>17 restaurant?</p> <p>18 A. His duties like he give me a</p> <p>19 favor. He is not on salary or anything.</p> <p>20 He doesn't have specific duties like you</p> <p>21 have to do this every day, you have to do</p> <p>22 this. He is just helping me.</p> <p>23 Q. How does he help you?</p> <p>24 A. How he helps me?</p> <p>25 Q. Yes.</p>
<p style="text-align: right;">Page 51</p> <p>1 N. VOLPER</p> <p>2 in the restaurant?</p> <p>3 A. No.</p> <p>4 Q. As you sit here today, is it</p> <p>5 your understanding that he has an</p> <p>6 ownership stake in the restaurant?</p> <p>7 A. Who?</p> <p>8 MR. SEGAL: Imran.</p> <p>9 Q. Imran?</p> <p>10 A. I have to look the records but I</p> <p>11 don't think so he is in my returns, no.</p> <p>12 Q. You don't think so?</p> <p>13 A. No, because I have like few</p> <p>14 other businesses. I am overwhelmed. I</p> <p>15 can't remember everything.</p> <p>16 Q. That's fine. I want to know</p> <p>17 what your understanding is right now.</p> <p>18 A. Yes.</p> <p>19 Q. And your understanding is I</p> <p>20 believe you testified he does not own any</p> <p>21 part of the restaurant, correct?</p> <p>22 A. I testified I don't remember</p> <p>23 because I have to look like the tax</p> <p>24 returns specialist, PA. I have to take a</p> <p>25 look and let you know.</p>	<p style="text-align: right;">Page 53</p> <p>1 N. VOLPER</p> <p>2 A. Like, you know, sometimes</p> <p>3 delivery, make deliveries, pick up</p> <p>4 products, whatever we need. You know, all</p> <p>5 these. Sometimes helps set up. He was</p> <p>6 running, helping me with social media,</p> <p>7 posting, running all this stuff. I</p> <p>8 remember. Because he was very -- like he</p> <p>9 is very knowledgeable in technology so</p> <p>10 when we change menus, he put new prices in</p> <p>11 wine and, you know, stuff like that.</p> <p>12 MR. DiGIULIO: Can we take a</p> <p>13 five minute break?</p> <p>14 THE WITNESS: Of course.</p> <p>15 (Whereupon, a short recess was</p> <p>16 taken.)</p> <p>17 MR. DiGIULIO: Back on the</p> <p>18 record.</p> <p>19 Q. When did Imran get involved with</p> <p>20 helping you with the restaurant?</p> <p>21 A. He got involved like pretty much</p> <p>22 early in the opening. Maybe like a year</p> <p>23 or two later or something like that, or</p> <p>24 six months or something like that.</p> <p>25 Q. What are the back of house</p>

<p style="text-align: right;">Page 54</p> <p>1 N. VOLPER</p> <p>2 positions at the restaurant?</p> <p>3 A. Back of the house?</p> <p>4 Q. Yes.</p> <p>5 A. Do you mean the kitchen?</p> <p>6 Q. Yes.</p> <p>7 A. Oh, okay. We have a chef</p> <p>8 obviously, we have sous chef, line cooks,</p> <p>9 standard stuff.</p> <p>10 Q. Chefs, sous chefs, line cooks.</p> <p>11 Any other positions?</p> <p>12 A. Dishwasher.</p> <p>13 Q. How many chefs does the</p> <p>14 restaurant employ at a time?</p> <p>15 A. Single one.</p> <p>16 Q. How many chefs has the</p> <p>17 restaurant employed since 2016?</p> <p>18 A. Like title chef, maybe like two</p> <p>19 or three, something like that.</p> <p>20 Q. Who is the first chef?</p> <p>21 A. Nelson.</p> <p>22 Q. When did he stop becoming the</p> <p>23 chef?</p> <p>24 A. Pretty much immediately.</p> <p>25 Q. When did he stop?</p>	<p style="text-align: right;">Page 56</p> <p>1 N. VOLPER</p> <p>2 Q. Franco?</p> <p>3 A. Yes.</p> <p>4 Q. What are the job duties of the</p> <p>5 chef?</p> <p>6 A. Job duties is like ordering</p> <p>7 food, supervising stuff, training, stuff.</p> <p>8 Q. Who decides the chef's pay?</p> <p>9 A. I did.</p> <p>10 Q. What is the current chef's pay?</p> <p>11 A. What is the current chef's pay?</p> <p>12 Q. Yes.</p> <p>13 MR. SEGAL: Objection, but you</p> <p>14 can answer.</p> <p>15 A. I believe it is like \$1,600</p> <p>16 something like that.</p> <p>17 Q. For how --</p> <p>18 A. Weekly.</p> <p>19 Q. You pay the chef weekly?</p> <p>20 A. Correct.</p> <p>21 Q. Not by the hour, correct?</p> <p>22 A. We pay weekly \$1,600.</p> <p>23 Q. Was that the chef's salary since</p> <p>24 2016?</p> <p>25 A. No, no. But we have no choice.</p>
<p style="text-align: right;">Page 55</p> <p>1 N. VOLPER</p> <p>2 A. Stop, okay. I think he stopped</p> <p>3 when the pandemic hit.</p> <p>4 Q. Since the pandemic who is the</p> <p>5 next chef that the restaurant hired?</p> <p>6 A. Well, basically we don't really</p> <p>7 hire like a real chef for few reasons. We</p> <p>8 cannot really find staff in the kitchen.</p> <p>9 Most of them like sous chefs. We cannot</p> <p>10 really find staff to work in the kitchen.</p> <p>11 We have very, very, very big issues</p> <p>12 especially in the back house. I have</p> <p>13 certain point maybe one or two people for</p> <p>14 maybe for weeks but not really like a chef</p> <p>15 but like try to, you know, help us. It</p> <p>16 was extremely tough. So right now I don't</p> <p>17 really have chef position, position. I</p> <p>18 have person like who is, you know, taking</p> <p>19 more responsibility of the kitchen.</p> <p>20 Q. Right now the restaurant doesn't</p> <p>21 have a chef?</p> <p>22 A. We have person who is you can</p> <p>23 technically say chef.</p> <p>24 Q. Who is that person?</p> <p>25 A. His name is Franco.</p>	<p style="text-align: right;">Page 57</p> <p>1 N. VOLPER</p> <p>2 Now we have to pay more money.</p> <p>3 Q. I believe you said there is sous</p> <p>4 chefs; is that correct?</p> <p>5 A. Correct.</p> <p>6 Q. What are the job duties of the</p> <p>7 sous?</p> <p>8 A. Sous chef is basically same</p> <p>9 duties like line cook, but they are more</p> <p>10 specialized more fine dining. It is for</p> <p>11 the -- not like -- it is more premium</p> <p>12 dining. It is not like diner. They are</p> <p>13 more knowledge than regular line cook.</p> <p>14 Q. What do the line cooks do?</p> <p>15 A. Line cooks is basically the, in</p> <p>16 our case it is basically like very simple</p> <p>17 tasks like opening oysters, do salads,</p> <p>18 stuff like that.</p> <p>19 Q. And the sous chefs are more</p> <p>20 technical?</p> <p>21 A. Correct.</p> <p>22 Q. Are the sous chefs paid by the</p> <p>23 hour?</p> <p>24 A. Correct.</p> <p>25 Q. And the line cooks are paid by</p>

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<p style="text-align: right;">Page 58</p> <p>1 N. VOLPER</p> <p>2 the hour?</p> <p>3 A. Correct.</p> <p>4 Q. How many sous chefs does the</p> <p>5 restaurant employ at one time?</p> <p>6 A. It is very hard to determine for</p> <p>7 few reasons. Especially in the last few</p> <p>8 years opening, closing is 25 percent, 50</p> <p>9 percent, not able to find staff.</p> <p>10 Sometimes we are very low, maybe only two</p> <p>11 three people. Sometimes we have four,</p> <p>12 five people. But it is -- it is very</p> <p>13 depends on our needs and our ability to</p> <p>14 find personnel.</p> <p>15 Q. Before COVID before 2020, how</p> <p>16 many sous chefs would the restaurant</p> <p>17 employ at a time?</p> <p>18 A. Usually like two.</p> <p>19 Q. How many line cooks does the</p> <p>20 restaurant employ?</p> <p>21 A. Line cooks?</p> <p>22 Q. Yes.</p> <p>23 A. One or two.</p> <p>24 Q. And before COVID, was that the</p> <p>25 same?</p>	<p style="text-align: right;">Page 60</p> <p>1 N. VOLPER</p> <p>2 A. Correct.</p> <p>3 Q. How many dishwashers does the</p> <p>4 restaurant have?</p> <p>5 A. Usually just one.</p> <p>6 Q. Just one?</p> <p>7 A. Yes.</p> <p>8 Q. And they work seven days a week?</p> <p>9 A. No, no. Sometimes the line</p> <p>10 cooks step up when we are not so busy so</p> <p>11 -- because, you know, we have to save</p> <p>12 money. Sometimes line cook slash</p> <p>13 dishwasher. Sometimes they step up and --</p> <p>14 even the chefs doing sometimes like, you</p> <p>15 know. I just have one chef or one sous</p> <p>16 chef and we have only one reservation,</p> <p>17 even chef and sous chef putting some, you</p> <p>18 know, clean dishes.</p> <p>19 Q. The dishwasher is paid by the</p> <p>20 hour, correct?</p> <p>21 A. Yes.</p> <p>22 Q. What is the dishwasher's hourly</p> <p>23 rate?</p> <p>24 A. (No verbal response.)</p> <p>25 Q. Do you know?</p>
<p style="text-align: right;">Page 59</p> <p>1 N. VOLPER</p> <p>2 A. Before COVID?</p> <p>3 Q. Yes.</p> <p>4 A. Pretty much the same, yes.</p> <p>5 Q. You said they are both paid by</p> <p>6 the hour, correct?</p> <p>7 A. Correct.</p> <p>8 Q. What is the pay rate for say a</p> <p>9 sous chef?</p> <p>10 A. I don't remember right now but</p> <p>11 obviously they are much higher than the</p> <p>12 minimum wage. So maybe range from 17, 18</p> <p>13 to 22, 23.</p> <p>14 Q. Does the restaurant maintain</p> <p>15 some kind of records that the shows how</p> <p>16 much the sous chef was being paid?</p> <p>17 A. Yes, of course. We give like</p> <p>18 weekly payroll.</p> <p>19 Q. You give pay stubs?</p> <p>20 A. Correct.</p> <p>21 Q. Is that the same for the line</p> <p>22 cooks?</p> <p>23 A. Correct.</p> <p>24 Q. Does the restaurant, you said</p> <p>25 dishwasher is the last position?</p>	<p style="text-align: right;">Page 61</p> <p>1 N. VOLPER</p> <p>2 A. I imagine something like --</p> <p>3 MR. SEGAL: Don't imagine. Do</p> <p>4 you know? Yes, I know or No, I don't</p> <p>5 know.</p> <p>6 A. No, no.</p> <p>7 Q. Is the dishwasher's hourly rate</p> <p>8 written down somewhere in the restaurant?</p> <p>9 A. In the POS system, yes.</p> <p>10 Automatic.</p> <p>11 Q. Does the restaurant issue pay</p> <p>12 stubs for the dishwashers?</p> <p>13 A. Yes.</p> <p>14 Q. The tips position at the</p> <p>15 restaurant are the servers, the bussers,</p> <p>16 the food runners, and the bartender; is</p> <p>17 that correct?</p> <p>18 A. Correct.</p> <p>19 Q. Those are the front-of-house</p> <p>20 positions?</p> <p>21 A. Yes.</p> <p>22 Q. And also the captain when there</p> <p>23 was a captain; is that right?</p> <p>24 A. Yes, of course.</p> <p>25 Q. All of those are the</p>

16 (Pages 58 - 61)

<p style="text-align: right;">Page 62</p> <p>1 N. VOLPER</p> <p>2 front-of-house positions, right?</p> <p>3 A. Yes, sir.</p> <p>4 Q. How many servers does the</p> <p>5 restaurant employ?</p> <p>6 A. Varies. Depends.</p> <p>7 Q. Currently how many?</p> <p>8 A. Currently?</p> <p>9 Q. Yes.</p> <p>10 A. I believe four servers, two</p> <p>11 bartenders.</p> <p>12 Q. How many work per shift?</p> <p>13 A. How many work per shift?</p> <p>14 Q. Yes.</p> <p>15 A. I'm sorry. I don't understand</p> <p>16 the question.</p> <p>17 Q. On any given night how many</p> <p>18 servers are working in the dinner shift?</p> <p>19 A. Friday and Saturday are the most</p> <p>20 busy obviously so pretty much everybody is</p> <p>21 there. Like slow days, like maybe one or</p> <p>22 two.</p> <p>23 Q. Did the restaurant employ a</p> <p>24 server named Cora Bethea (ph) this year?</p> <p>25 A. Cora --</p>	<p style="text-align: right;">Page 64</p> <p>1 N. VOLPER</p> <p>2 A. At a given time, most of the</p> <p>3 time like one or two.</p> <p>4 Q. What are the runners' job</p> <p>5 duties?</p> <p>6 A. Runners?</p> <p>7 Q. Yes.</p> <p>8 A. Well, they help with running the</p> <p>9 food, pick up the food from the station,</p> <p>10 bring the food to the table. If anything</p> <p>11 like any dishes picked up, change dishes.</p> <p>12 Stuff like that.</p> <p>13 Q. How many bussers does the</p> <p>14 restaurant employ?</p> <p>15 A. Pretty much the same thing; one</p> <p>16 or two.</p> <p>17 Q. What are the busser's</p> <p>18 responsibilities?</p> <p>19 A. They stay more front of the</p> <p>20 house putting water, changing glasses, you</p> <p>21 know, bring new silverware if changing</p> <p>22 between courses, stuff like that.</p> <p>23 Q. How many bartenders does the</p> <p>24 restaurant employ at a time?</p> <p>25 A. Usually it is one.</p>
<p style="text-align: right;">Page 63</p> <p>1 N. VOLPER</p> <p>2 Q. Do you know if the restaurant</p> <p>3 employed a person named Cora Bethea this</p> <p>4 year?</p> <p>5 A. No, I don't know.</p> <p>6 Q. Do you know whether she worked</p> <p>7 -- withdrawn.</p> <p>8 Did the restaurant employ a</p> <p>9 server named Lucia Ross Gizburt (ph) this</p> <p>10 year?</p> <p>11 A. Doesn't ring a bell.</p> <p>12 Q. What are the names of the four</p> <p>13 current servers that are working at the</p> <p>14 restaurant?</p> <p>15 A. Current?</p> <p>16 Q. Yes.</p> <p>17 A. It is Alexander, Rivaldo,</p> <p>18 Luccio, Oscar.</p> <p>19 Q. How many runners does the</p> <p>20 restaurant employee at a time?</p> <p>21 A. Usually one per night or two.</p> <p>22 Depends how busy we are.</p> <p>23 Q. One or two per night. How many</p> <p>24 at a given time does the restaurant</p> <p>25 employ?</p>	<p style="text-align: right;">Page 65</p> <p>1 N. VOLPER</p> <p>2 Q. How many bartenders work in the</p> <p>3 restaurant now?</p> <p>4 A. Now I think two part-time.</p> <p>5 Q. Who are they?</p> <p>6 A. I believe her name is Hailey and</p> <p>7 Taylor or something like that.</p> <p>8 Q. Hailey is the person you</p> <p>9 mentioned before who you interviewed and</p> <p>10 hired?</p> <p>11 A. Yes, sir.</p> <p>12 Q. What are the job duties of the</p> <p>13 bartenders?</p> <p>14 A. Job duties like -- because we</p> <p>15 have like a pool house, we basically try</p> <p>16 to engage everybody because of pool house.</p> <p>17 So, you know, but like the major major</p> <p>18 thing is the bartenders to make drinks or</p> <p>19 pour cocktails, but they are not</p> <p>20 absolutely to do this. Sometimes they</p> <p>21 serve food in the bar, you serve food.</p> <p>22 Pretty much main main is to fill any</p> <p>23 alcohol, beverage. They can serve. They</p> <p>24 can pick up plates, glass. Depends which</p> <p>25 section maybe we need help. Because we</p>

<p style="text-align: right;">Page 66</p> <p>1 N. VOLPER</p> <p>2 are pool house, we try to help each other</p> <p>3 front of the house always.</p> <p>4 Q. Who are the current bussers that</p> <p>5 are employed at the restaurant?</p> <p>6 A. The current?</p> <p>7 Q. Yes.</p> <p>8 A. What's his name --</p> <p>9 Q. If you don't know, that's okay.</p> <p>10 A. I don't know but I can provide</p> <p>11 information if you need.</p> <p>12 Q. Who are the current runners at</p> <p>13 the restaurant?</p> <p>14 A. I can provide that information.</p> <p>15 Q. You don't know right now but you</p> <p>16 can provide information?</p> <p>17 A. I can, yes.</p> <p>18 Q. That's fine.</p> <p>19 The plaintiff, Nino Martinenko,</p> <p>20 worked at the restaurant as a server,</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. Ms. Martinenko as a server had</p> <p>24 the same job duties as all the other</p> <p>25 servers, correct?</p>	<p style="text-align: right;">Page 68</p> <p>1 N. VOLPER</p> <p>2 correct?</p> <p>3 A. I believe so, yes.</p> <p>4 Q. She came back from work at the</p> <p>5 restaurant from early 2021 to December of</p> <p>6 2021, correct?</p> <p>7 A. I believe that's accurate.</p> <p>8 Q. And plaintiff, Dagmara Huk,</p> <p>9 worked as a restaurant as a bartender,</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. And her job duties as a</p> <p>13 bartender was the same as any other</p> <p>14 bartender at the restaurant, right?</p> <p>15 A. Basically, we have the same duty</p> <p>16 as everybody else. Order, bring the food,</p> <p>17 everything like -- it was like pool house.</p> <p>18 It is not like specifically.</p> <p>19 Q. Before we talked about the POS</p> <p>20 system where the restaurant keeps track of</p> <p>21 employee's time; is that correct?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And so from 2016 to now the</p> <p>24 restaurant required all of its employees</p> <p>25 to clock in and clock out; is that</p>
<p style="text-align: right;">Page 67</p> <p>1 N. VOLPER</p> <p>2 A. Yes, sir.</p> <p>3 Q. I believe you testified Ms.</p> <p>4 Martinenko helped with payroll; is that</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. What did she do to help with</p> <p>8 payroll?</p> <p>9 A. Like calculation, write down</p> <p>10 checks, issue to people.</p> <p>11 Q. Did any other servers help with</p> <p>12 that as well?</p> <p>13 A. I believe Alexander, other</p> <p>14 Alexander also did that duties.</p> <p>15 Q. They are both servers?</p> <p>16 A. Yes.</p> <p>17 Q. Ms. Martinenko worked for the</p> <p>18 restaurant during two separate periods,</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. She began working for you in</p> <p>22 June of 2015, correct?</p> <p>23 A. I mean, I don't remember exactly</p> <p>24 when but if that's what she said.</p> <p>25 Q. She worked until 2018; is that</p>	<p style="text-align: right;">Page 69</p> <p>1 N. VOLPER</p> <p>2 correct?</p> <p>3 A. Pretty much as far as I am</p> <p>4 aware, yes. I'm not sure about the shifts</p> <p>5 but, you know.</p> <p>6 Q. In terms of front-of-house</p> <p>7 employees, when the restaurant did operate</p> <p>8 with the lunch shift, I believe you</p> <p>9 testified that the restaurant opened for</p> <p>10 the customers at noon, correct?</p> <p>11 A. Correct.</p> <p>12 Q. What time did the servers have</p> <p>13 to arrive at the restaurant?</p> <p>14 A. They usually arrive like maybe</p> <p>15 like fifteen minutes to thirty minutes</p> <p>16 earlier.</p> <p>17 Q. What do they do between that</p> <p>18 time and noon?</p> <p>19 A. What they did?</p> <p>20 Q. Yes.</p> <p>21 A. I mean, they make sure</p> <p>22 everything is set up correctly. Tables,</p> <p>23 missing any glasses, silverware polish,</p> <p>24 like preparation for lunch.</p> <p>25 Q. Is that called side work in the</p>

<p style="text-align: right;">Page 70</p> <p>1 N. VOLPER</p> <p>2 industry?</p> <p>3 MR. SEGAL: Objection.</p> <p>4 A. No, no.</p> <p>5 Q. What is side work?</p> <p>6 A. Side work is not related to food</p> <p>7 industry.</p> <p>8 Q. I'm sorry. I didn't understand</p> <p>9 you.</p> <p>10 A. Side work is not related to the</p> <p>11 food industry. As a waiter you have to</p> <p>12 make sure the tables are set up, the</p> <p>13 glasses are set up, the right silverware</p> <p>14 is there, we have napkins folded, you</p> <p>15 know, preparation before any food</p> <p>16 services.</p> <p>17 Q. What time did the runners have</p> <p>18 to arrive at the restaurant?</p> <p>19 A. They usually arrive like I</p> <p>20 believe 4:00.</p> <p>21 Q. Does the restaurant have any</p> <p>22 runners for the lunch shift?</p> <p>23 A. Most of the time we don't</p> <p>24 because we have only one or two tables so</p> <p>25 it is not necessary. The wait staff</p>	<p style="text-align: right;">Page 72</p> <p>1 N. VOLPER</p> <p>2 shift they also worked a dinner shift; is</p> <p>3 that right?</p> <p>4 A. Sometimes, yes.</p> <p>5 Q. Is that called a double?</p> <p>6 A. This is called -- can you be</p> <p>7 specific? What do you mean by double?</p> <p>8 MR. SEGAL: What the gentleman</p> <p>9 is asking is that you have a lunch</p> <p>10 shift, right?</p> <p>11 THE WITNESS: Okay.</p> <p>12 MR. SEGAL: And that's from --</p> <p>13 THE WITNESS: 12:00.</p> <p>14 MR. SEGAL: 12:00. But they</p> <p>15 came half an hour or fifteen minutes</p> <p>16 early?</p> <p>17 THE WITNESS: Okay.</p> <p>18 MR. SEGAL: Till when? When did</p> <p>19 that lunch time --</p> <p>20 THE WITNESS: Depends. It</p> <p>21 depends. Sometimes they go early</p> <p>22 because they get tired.</p> <p>23 MR. SEGAL: Roughly what is</p> <p>24 lunch? 12:00 to 1:00, 12:00 to 2:00?</p> <p>25 THE WITNESS: Oh, the lunch</p>
<p style="text-align: right;">Page 71</p> <p>1 N. VOLPER</p> <p>2 prefer not to do that because you have to</p> <p>3 share the tip with somebody else. They</p> <p>4 want to keep everything for themselves.</p> <p>5 Q. Were bussers assigned to lunch</p> <p>6 shift when there was a lunch shift?</p> <p>7 A. I don't remember unless there</p> <p>8 was an event where more people are</p> <p>9 involved.</p> <p>10 Q. What about bartenders?</p> <p>11 A. Bartenders as I mentioned</p> <p>12 before, we are like-- pretty much</p> <p>13 everybody knows serving and bartender. So</p> <p>14 some of the bartenders was also to take</p> <p>15 care of the service. We was pool house so</p> <p>16 pretty much everybody how to do. Even</p> <p>17 servers, they know how to do the bartender</p> <p>18 jobs.</p> <p>19 Q. If a runner or busser or</p> <p>20 bartender did work a lunch shift, they</p> <p>21 would have clocked in before that shift,</p> <p>22 correct?</p> <p>23 A. They are supposed to, yes.</p> <p>24 Q. Most of the time when the</p> <p>25 front-of-house employee worked a lunch</p>	<p style="text-align: right;">Page 73</p> <p>1 N. VOLPER</p> <p>2 time?</p> <p>3 MR. SEGAL: Yes.</p> <p>4 THE WITNESS: It can be up to</p> <p>5 3:00. 4:00. Lunch is open until</p> <p>6 around 4:00. After that we serve</p> <p>7 dinner.</p> <p>8 Q. Does the restaurant close in</p> <p>9 between lunch and dinner shift?</p> <p>10 A. No.</p> <p>11 Q. So it is open from noon until</p> <p>12 when it closes?</p> <p>13 A. Yes, sir.</p> <p>14 Q. If an employee works both the</p> <p>15 lunch shift and dinner shift, works from</p> <p>16 when the restaurant opens until later, do</p> <p>17 they work straight through or do they get</p> <p>18 a break?</p> <p>19 A. Well, I think -- I cannot really</p> <p>20 say that because I was not there. Usually</p> <p>21 when I see like recently, they take maybe</p> <p>22 half an hour break or something,</p> <p>23 cigarette, walking. That's my current</p> <p>24 experience during the short period of time</p> <p>25 right now. In the past, I'm not really</p>

<p style="text-align: right;">Page 74</p> <p>1 N. VOLPER</p> <p>2 sure.</p> <p>3 Q. When is that break that you see</p> <p>4 people doing that?</p> <p>5 A. Whenever they did, when there is</p> <p>6 no people in the restaurant they can take</p> <p>7 a break or somebody else come to the</p> <p>8 restaurant like let's say about 4:00.</p> <p>9 Q. Do you instruct front-of-house</p> <p>10 employee who is taking a break to clock in</p> <p>11 and clock out when they come back in and</p> <p>12 they are done taking the break?</p> <p>13 A. I don't remember.</p> <p>14 MR. SEGAL: Do they?</p> <p>15 THE WITNESS: I don't believe I</p> <p>16 require that. I don't know. I don't</p> <p>17 think they did that.</p> <p>18 Q. If a front-of-house employee</p> <p>19 only worked the lunch shift, when did that</p> <p>20 shift typically end?</p> <p>21 A. Most of the time they work more</p> <p>22 than the lunch shift.</p> <p>23 Q. I understand. Did sometimes</p> <p>24 they only worked a lunch shift?</p> <p>25 A. Probably maybe 5:00, 6:00,</p>	<p style="text-align: right;">Page 76</p> <p>1 N. VOLPER</p> <p>2 meal and leave, correct?</p> <p>3 A. They are not required. Like</p> <p>4 let's say if it is only one table left and</p> <p>5 you have three servers, some of them can</p> <p>6 go home.</p> <p>7 Q. Is that the case throughout the</p> <p>8 day? If there is not enough customers</p> <p>9 would the restaurant sometimes cut</p> <p>10 someone's shift and they can go home?</p> <p>11 A. Most of the time they figure out</p> <p>12 themselves. I may cut sometimes. Maybe,</p> <p>13 maybe a few times in this period of time</p> <p>14 when I figure out myself if we are not</p> <p>15 busy. We don't need all this stuff. But</p> <p>16 most of the time they did it themselves</p> <p>17 like I don't want to stay here for \$10</p> <p>18 more and they go early.</p> <p>19 Q. For the back-of-house</p> <p>20 employees, for the times when the lunch</p> <p>21 was being served, what time are the</p> <p>22 back-of-house employees required to</p> <p>23 arrive?</p> <p>24 A. Back-of-house employees you mean</p> <p>25 the kitchen staff?</p>
<p style="text-align: right;">Page 75</p> <p>1 N. VOLPER</p> <p>2 something like that. But most of the time</p> <p>3 they worked after.</p> <p>4 Q. For front-of-house employees who</p> <p>5 only worked the dinner shift, what time</p> <p>6 were they required to get to work?</p> <p>7 A. Usually 4:00. Sometimes they</p> <p>8 come early.</p> <p>9 Q. What time does the dinner shift</p> <p>10 end?</p> <p>11 A. It is not like specific time.</p> <p>12 Usually 10:30, 11:00.</p> <p>13 Q. What time does the kitchen</p> <p>14 close?</p> <p>15 A. We close depends on the day. I</p> <p>16 believe around 10:00. Some days 10:30.</p> <p>17 Q. 10:00 during the week and 10:30</p> <p>18 on Friday and Saturday?</p> <p>19 A. Yes, yes. It used to be 9:45.</p> <p>20 Then because -- we changed when we see</p> <p>21 people wants to come late at night so we</p> <p>22 opened maybe fifteen minutes more, the</p> <p>23 hours.</p> <p>24 Q. The servers are required to work</p> <p>25 until the last customer finishes their</p>	<p style="text-align: right;">Page 77</p> <p>1 N. VOLPER</p> <p>2 Q. Yes.</p> <p>3 A. They usually arrive like also</p> <p>4 thirty minutes before 12:00, around 11:30</p> <p>5 something like that.</p> <p>6 Q. How many back-of-house employees</p> <p>7 work the lunch shift?</p> <p>8 A. Just one most of the time.</p> <p>9 Q. Would that be the chef?</p> <p>10 A. No. It varies. It varies. When</p> <p>11 the chef is off, you have like sous chef.</p> <p>12 Most of the time it is not very busy in</p> <p>13 the lunch so we don't require many people</p> <p>14 at the time.</p> <p>15 Q. So most of the time the</p> <p>16 back-of-house employees who works a lunch</p> <p>17 shift also works the dinner shift?</p> <p>18 A. Most of the time, yes.</p> <p>19 Q. Did they work straight through</p> <p>20 or did they get a break?</p> <p>21 A. Pretty much the same. If</p> <p>22 somebody comes like, they usually come</p> <p>23 2:00, they taking breaks. We are very</p> <p>24 like -- we limit to when it is not busy.</p> <p>25 So pretty much they make their own</p>

20 (Pages 74 - 77)

<p style="text-align: right;">Page 78</p> <p>1 N. VOLPER</p> <p>2 decisions when they want to go to break.</p> <p>3 We are not -- we don't enforce that like</p> <p>4 you have to do this from this time to this</p> <p>5 time.</p> <p>6 Q. Okay. For the back-of-house</p> <p>7 employees who are assigned just to a</p> <p>8 dinner shift, what time are they required</p> <p>9 to arrive?</p> <p>10 A. Sometimes 2:00, sometimes 4:00.</p> <p>11 It depends on the reservations and</p> <p>12 preparation time.</p> <p>13 Q. Is it different positions are</p> <p>14 required to arrive at different times or</p> <p>15 why would it shift from 2:00 to 4:00?</p> <p>16 A. Because if we are like too busy,</p> <p>17 like from the previous day we have certain</p> <p>18 reservations where we require more</p> <p>19 preparation of the food, then they come</p> <p>20 maybe two hours early to prepare for</p> <p>21 service.</p> <p>22 Q. Between 2:00 and 4:00 depending</p> <p>23 on how busy the restaurant is, what time</p> <p>24 do they work until?</p> <p>25 A. When does the shift end?</p>	<p style="text-align: right;">Page 80</p> <p>1 N. VOLPER</p> <p>2 attorneys produced in this litigation.</p> <p>3 A. Okay.</p> <p>4 Q. They are produced without Bates</p> <p>5 numbers. Plaintiff's counsel put these</p> <p>6 Bates numbers on the document for</p> <p>7 identification. They are at the bottom</p> <p>8 right-hand corner. For the record, they</p> <p>9 are Bates stamped D1216 through D1254.</p> <p>10 MR. SEGAL: Hello. One second.</p> <p>11 Off the record.</p> <p>12 (Whereupon, an off-the-record</p> <p>13 discussion was held.)</p> <p>14 MR. DiGIULIO: Back on the</p> <p>15 record.</p> <p>16 Q. Just to be clear, this is</p> <p>17 Exhibit 2. It is marked Bates D1216 to</p> <p>18 D1254. These are the plaintiff Nino</p> <p>19 Martinenko's time records from the</p> <p>20 restaurant, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And the restaurant paid Nino</p> <p>23 Martinenko for the hours reflected in</p> <p>24 these records, right?</p> <p>25 A. Correct. Plus tips.</p>
<p style="text-align: right;">Page 79</p> <p>1 N. VOLPER</p> <p>2 MR. SEGAL: Objection. Asked</p> <p>3 and answered.</p> <p>4 Q. You can answer.</p> <p>5 A. Can you repeat? What did you</p> <p>6 say? I get confused.</p> <p>7 Q. When the back-of-house employees</p> <p>8 worked at dinner shift, when does the</p> <p>9 shift end?</p> <p>10 A. Depends on what time we are</p> <p>11 busy. Usually after 9:45, 9:30 the staff</p> <p>12 cleaning up. Usually 10:30, 11:00,</p> <p>13 something like that.</p> <p>14 MR. DiGIULIO: The next stretch</p> <p>15 is going to be a bunch of documents so</p> <p>16 we can take a lunch break.</p> <p>17 (Whereupon, a short recess was</p> <p>18 taken.)</p> <p>19 MR. DiGIULIO: Back on the</p> <p>20 record.</p> <p>21 (Whereupon, Bates D1216 to D1254</p> <p>22 was marked as Defendant's Exhibit 2</p> <p>23 for identification as of this date by</p> <p>24 the Reporter.)</p> <p>25 Q. These are documents your</p>	<p style="text-align: right;">Page 81</p> <p>1 N. VOLPER</p> <p>2 Q. Did you give these documents to</p> <p>3 your attorney?</p> <p>4 A. Yes. I believe I gave to him,</p> <p>5 yes.</p> <p>6 Q. How did you obtain them?</p> <p>7 A. How?</p> <p>8 Q. Yes.</p> <p>9 A. Through the POS system.</p> <p>10 Q. Are all the time records for all</p> <p>11 of the restaurant's employees kept in the</p> <p>12 POS system?</p> <p>13 A. Yes.</p> <p>14 Q. And you have access to that?</p> <p>15 A. Yes.</p> <p>16 Q. Going back to 2016, correct?</p> <p>17 A. Most likely, yes.</p> <p>18 Q. These are from 2016?</p> <p>19 A. I don't see.</p> <p>20 Q. Top left corner.</p> <p>21 MR. SEGAL: Top left corner.</p> <p>22 A. It is on top. Okay. Yes.</p> <p>23 Q. You are able to pull the time</p> <p>24 records for all employees from 2016 to</p> <p>25 present, correct?</p>

<p style="text-align: right;">Page 82</p> <p>1 N. VOLPER</p> <p>2 A. Yes.</p> <p>3 Q. You can put that to the side for</p> <p>4 now.</p> <p>5 (Whereupon, Bates D1212 to D1215</p> <p>6 was marked as Defendant's Exhibit 3</p> <p>7 for identification as of this date by</p> <p>8 the Reporter.)</p> <p>9 MR. DiGIULIO: For the record,</p> <p>10 this is marked Exhibit 3. These</p> <p>11 documents your attorney produced in</p> <p>12 this litigation. They were produced</p> <p>13 without Bates so we Bates stamped them</p> <p>14 ourselves. Bates D1212 through 1215.</p> <p>15 We will send it to you.</p> <p>16 Q. These are Dagmara Huk's time</p> <p>17 records from the restaurant, correct?</p> <p>18 A. Correct.</p> <p>19 Q. The restaurant paid Ms. Dagmara</p> <p>20 for the hours reflected in these records,</p> <p>21 correct?</p> <p>22 A. Correct.</p> <p>23 Q. These time records begin in 2020</p> <p>24 and go through 2021, correct?</p> <p>25 A. It says the years. I don't see</p>	<p style="text-align: right;">Page 84</p> <p>1 N. VOLPER</p> <p>2 was marked as Defendant's Exhibit 4</p> <p>3 for identification as of this date by</p> <p>4 the Reporter.)</p> <p>5 MR. DiGIULIO: These documents</p> <p>6 are produced by you in this litigation</p> <p>7 and we have put Bates stamp numbers on</p> <p>8 them. For the record, what's been</p> <p>9 marked as Exhibit 4 is Bates D934</p> <p>10 through D1012.</p> <p>11 Q. Are these the pay stubs that the</p> <p>12 restaurant issued to the plaintiff, Nino</p> <p>13 Martinenko?</p> <p>14 A. Yeah, looks like.</p> <p>15 Q. These pay stubs were prepared by</p> <p>16 the accounting company Crow; is that</p> <p>17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. Where is Crow located?</p> <p>20 A. I think they moved back to New</p> <p>21 Jersey. They used to be in Astoria,</p> <p>22 Queens.</p> <p>23 Q. When did the restaurant begin</p> <p>24 using Crow to use pay statements?</p> <p>25 A. I think it was before the</p>
<p style="text-align: right;">Page 83</p> <p>1 N. VOLPER</p> <p>2 it.</p> <p>3 Q. Ms. Huk, her employment ended</p> <p>4 last year, correct?</p> <p>5 A. Correct.</p> <p>6 Q. If you go to the final page</p> <p>7 D1215, September 24th is the last entry?</p> <p>8 A. Yes.</p> <p>9 Q. That would be September 24,</p> <p>10 2021?</p> <p>11 A. Yes.</p> <p>12 Q. Working on our way backwards</p> <p>13 from there, these time records cover the</p> <p>14 span of 2021 into the fall and late summer</p> <p>15 of 2020?</p> <p>16 A. Okay.</p> <p>17 Q. We can put that to the side for</p> <p>18 now.</p> <p>19 Q. Is the pay period for the</p> <p>20 restaurant Monday through Sunday?</p> <p>21 A. Monday through Sunday, correct.</p> <p>22 Q. And has it been Monday through</p> <p>23 Sunday from 2016 to the current date?</p> <p>24 A. Correct.</p> <p>25 (Whereupon, Bates D934 to D1012</p>	<p style="text-align: right;">Page 85</p> <p>1 N. VOLPER</p> <p>2 pandemic.</p> <p>3 Q. What does the restaurant send to</p> <p>4 Crow every week in order for them to</p> <p>5 calculate the pay stubs?</p> <p>6 A. Well, I guess we put on the POS</p> <p>7 system the hours and then the tips -- the</p> <p>8 tips during that period of time usually</p> <p>9 Monday through Sunday.</p> <p>10 Q. Does the POS system contain the</p> <p>11 hourly rate of pay for each employee?</p> <p>12 A. I believe so, but I'm not</p> <p>13 hundred percent sure.</p> <p>14 Q. Is this information sent</p> <p>15 electronically to Crow every week?</p> <p>16 A. I'm not aware how it is sent.</p> <p>17 Q. Who sends it?</p> <p>18 A. Well, most of the time either</p> <p>19 employee or Imran.</p> <p>20 Q. Do they e-mail it to Crow?</p> <p>21 A. I have no idea.</p> <p>22 Q. Even before 2020 you were not</p> <p>23 involved in that transaction?</p> <p>24 A. No.</p> <p>25 Q. How does the restaurant receive</p>

<p style="text-align: right;">Page 86</p> <p>1 N. VOLPER</p> <p>2 the pay stubs from Crow? Vie e-mail?</p> <p>3 A. I guess he prints statements</p> <p>4 like this.</p> <p>5 Q. Crow e-mails the statements to</p> <p>6 the restaurant?</p> <p>7 A. To me, I never e-mail it so I</p> <p>8 don't know. Can be to employee or to</p> <p>9 Imran. I have no idea how transmitted but</p> <p>10 to me directly, no.</p> <p>11 Q. Is there a specific person at</p> <p>12 Crow that the restaurant works with?</p> <p>13 A. Yes.</p> <p>14 Q. Who is that person?</p> <p>15 A. Ebed.</p> <p>16 Q. Can you spell that?</p> <p>17 A. E-B-E-D, I believe.</p> <p>18 Q. Does Ebed have a last name?</p> <p>19 A. I don't remember.</p> <p>20 Q. Have you worked with Ebed?</p> <p>21 A. Yes.</p> <p>22 Q. When you work with him, do you</p> <p>23 call him on the phone?</p> <p>24 A. Yes.</p> <p>25 Q. Do you e-mail him?</p>	<p style="text-align: right;">Page 88</p> <p>1 N. VOLPER</p> <p>2 reflect what the restaurant paid to Ms.</p> <p>3 Martinenko during the pay period listed</p> <p>4 here?</p> <p>5 A. I assume. I mean, I don't</p> <p>6 calculate the -- I don't calculate weekly.</p> <p>7 I never been involved in that.</p> <p>8 Q. Do you have any reason to</p> <p>9 believe that these do not accurately</p> <p>10 reflect what Mr. Martinenko's pay was?</p> <p>11 A. I'm sorry. Can you repeat the</p> <p>12 question?</p> <p>13 Q. Do you have any reason to</p> <p>14 believe that these wage statements do not</p> <p>15 accurately reflect Mr. Martinenko's pay?</p> <p>16 A. I believe they are accurate.</p> <p>17 (Whereupon, Bates Plaintiff's 25</p> <p>18 to 43 was marked as Defendant's</p> <p>19 Exhibit 5 for identification as of</p> <p>20 this date by the Reporter.)</p> <p>21 Q. These are documents that are in</p> <p>22 Nino Martinenko's possession. For the</p> <p>23 record, they are marked Bates 25 through</p> <p>24 43. Please take a look at the first</p> <p>25 document pages plaintiff's 25 through 28.</p>
<p style="text-align: right;">Page 87</p> <p>1 N. VOLPER</p> <p>2 A. Yes.</p> <p>3 Q. What do you e-mail him about?</p> <p>4 A. Like different aspects of the</p> <p>5 company because I have few more companies.</p> <p>6 Some of them, you know, different e-mails</p> <p>7 and stuff like that.</p> <p>8 MR. SEGAL: Focus on this</p> <p>9 company.</p> <p>10 Q. Do you have the physical address</p> <p>11 for the company?</p> <p>12 A. Not in front of me.</p> <p>13 Q. Do you have access to it?</p> <p>14 A. Correct.</p> <p>15 Q. If we ask for it you can provide</p> <p>16 it to us at some point?</p> <p>17 A. Yes.</p> <p>18 Q. What city in New Jersey is it</p> <p>19 in?</p> <p>20 A. He recently moved so I think</p> <p>21 Elizabeth. I'm not sure.</p> <p>22 *MR. SEGAL: I will tell you</p> <p>23 what, we will get it.</p> <p>24 MR. DiGIULIO: Thank you.</p> <p>25 Q. Do these pay stubs accurately</p>	<p style="text-align: right;">Page 89</p> <p>1 N. VOLPER</p> <p>2 Let me know if you know what these</p> <p>3 documents are.</p> <p>4 A. What should I do?</p> <p>5 Q. On this first page on</p> <p>6 plaintiff's 25, have you seen this</p> <p>7 document before?</p> <p>8 A. This particular document, no.</p> <p>9 Q. Are you familiar with this type</p> <p>10 of document?</p> <p>11 A. I am familiar.</p> <p>12 Q. What type of document is this?</p> <p>13 A. This is basically tracking like</p> <p>14 hours and tips.</p> <p>15 MR. SEGAL: Go to the first</p> <p>16 page.</p> <p>17 A. Yes.</p> <p>18 Q. Is this a document that is used</p> <p>19 for the restaurant?</p> <p>20 A. Correct.</p> <p>21 Q. Who created this document?</p> <p>22 A. Like every week or in general</p> <p>23 who create this document?</p> <p>24 Q. In general.</p> <p>25 A. I don't remember who created</p>

23 (Pages 86 - 89)

<p style="text-align: right;">Page 90</p> <p>1 N. VOLPER</p> <p>2 this document.</p> <p>3 Q. Were you involved in the</p> <p>4 creation of the document?</p> <p>5 A. I don't remember. That's many</p> <p>6 years ago.</p> <p>7 Q. How is the document used?</p> <p>8 A. We have like, I guess they have</p> <p>9 a lot of printouts and then they put</p> <p>10 information.</p> <p>11 Q. The first page right here on</p> <p>12 plaintiff 25 has a list of individuals and</p> <p>13 space for the signature. Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. At the top the statement reads,</p> <p>16 this document states that I have been paid</p> <p>17 for this following dates, July 19th</p> <p>18 through July 25, 2021. Correct?</p> <p>19 A. Correct.</p> <p>20 Q. Did the restaurant require the</p> <p>21 individuals to sign a document like this</p> <p>22 when they received their pay?</p> <p>23 A. Sometimes we have issues like I</p> <p>24 don't get a check for that period of time.</p> <p>25 So I guess that's one of the reasons to</p>	<p style="text-align: right;">Page 92</p> <p>1 N. VOLPER</p> <p>2 A. Also.</p> <p>3 Q. Is there anywhere else that the</p> <p>4 documents are kept?</p> <p>5 A. I don't believe so.</p> <p>6 Q. These documents were in Nino</p> <p>7 Martinenko's possession. Do you know how</p> <p>8 she got them?</p> <p>9 A. No idea.</p> <p>10 Q. Do you know who sent them to</p> <p>11 her?</p> <p>12 A. I don't believe who sent any</p> <p>13 documents like that. Probably she got bit</p> <p>14 from the office or something.</p> <p>15 Q. Let's turn to the next page</p> <p>16 plaintiff 26. What is that document?</p> <p>17 A. The way I see it, that's</p> <p>18 reflecting the dates, the hours, and the</p> <p>19 tips. Not including cash tips. Including</p> <p>20 the meal but not including the cash tips.</p> <p>21 Q. This tip is only for credit card</p> <p>22 tips?</p> <p>23 A. Yes.</p> <p>24 Q. Who prepared this?</p> <p>25 A. This specific one, I have no</p>
<p style="text-align: right;">Page 91</p> <p>1 N. VOLPER</p> <p>2 keep like more closely for the record.</p> <p>3 Q. Does the restaurant maintain</p> <p>4 records like this that have signatures of</p> <p>5 employees who receive their checks?</p> <p>6 A. I believe we have some records,</p> <p>7 yes.</p> <p>8 Q. When did the restaurant start</p> <p>9 inputting this system?</p> <p>10 A. I don't remember. I don't</p> <p>11 remember.</p> <p>12 Q. Where are the signed copies of</p> <p>13 these documents kept?</p> <p>14 A. The signed document of this</p> <p>15 (indicating)?</p> <p>16 Q. Yes.</p> <p>17 A. Well, this is one of the copies.</p> <p>18 I guess that's never been signed. I think</p> <p>19 we should ask the staff where they keep</p> <p>20 them because usually they handle all this</p> <p>21 stuff.</p> <p>22 Q. Are these type of documents --</p> <p>23 A. The plaintiff.</p> <p>24 Q. Are these documents kept in the</p> <p>25 office of the restaurant?</p>	<p style="text-align: right;">Page 93</p> <p>1 N. VOLPER</p> <p>2 idea.</p> <p>3 Q. Who is in charge of generally</p> <p>4 preparing this document?</p> <p>5 A. The staff. Sometimes Imran do</p> <p>6 it.</p> <p>7 Q. Are these documents saved</p> <p>8 electronically anywhere?</p> <p>9 A. I don't believe so, no. I don't</p> <p>10 believe.</p> <p>11 Q. But the document was printed</p> <p>12 out, right? There is no handwritten --</p> <p>13 A. Looks like a printout, yes.</p> <p>14 Q. On this document, are the people</p> <p>15 listed above the word kitchen halfway</p> <p>16 down, are these the front of house</p> <p>17 employees who worked on the week of</p> <p>18 July 19th to 25th in 2021?</p> <p>19 A. The kitchen staff?</p> <p>20 Q. Above the kitchen?</p> <p>21 A. Looks like the front of house</p> <p>22 staff, yes.</p> <p>23 Q. Under the top line where it says</p> <p>24 hours, there is a number of hours each</p> <p>25 person worked?</p>

24 (Pages 90 - 93)

<p style="text-align: right;">Page 94</p> <p>1 N. VOLPER</p> <p>2 A. Looks like, yes.</p> <p>3 Q. Where did the numbers come from?</p> <p>4 A. I guess from the POS system.</p> <p>5 Q. What is the name of the POS</p> <p>6 system?</p> <p>7 A. Lavu, I think.</p> <p>8 Q. I believe you said the numbers</p> <p>9 under the tip line are the credit card</p> <p>10 tips?</p> <p>11 A. I believe, yes.</p> <p>12 Q. Where do those numbers come</p> <p>13 from?</p> <p>14 A. From the employee. They fill it</p> <p>15 up daily how much money they make in</p> <p>16 credit card tips.</p> <p>17 MR. SEGAL: Stop. Credit card</p> <p>18 tips come from when they give --</p> <p>19 MS. SCHULMAN: Let him answer.</p> <p>20 MR. SEGAL: He said cash.</p> <p>21 Q. For credit card tips, where do</p> <p>22 these numbers come from?</p> <p>23 A. They are coming from the --</p> <p>24 let's say that night Alexander Rynkovsky</p> <p>25 worked, he fills up a form how much cash</p>	<p style="text-align: right;">Page 96</p> <p>1 N. VOLPER</p> <p>2 Q. I am going to go through the</p> <p>3 names here. Perez Everardo, what position</p> <p>4 is he?</p> <p>5 A. He is front of house.</p> <p>6 Q. Alexander Rynkovsky?</p> <p>7 A. Front of house.</p> <p>8 Q. What is asterisk next to his</p> <p>9 name?</p> <p>10 A. No idea.</p> <p>11 Q. Is he a captain?</p> <p>12 A. No.</p> <p>13 Q. Samuel Garcia, what position is</p> <p>14 he?</p> <p>15 A. I think is food runner.</p> <p>16 Q. Javier Clemente?</p> <p>17 A. Either food runner or busser.</p> <p>18 Q. Hector Conoz?</p> <p>19 A. I don't remember this guy. He</p> <p>20 is a food runner or busser.</p> <p>21 Q. Below the word kitchen these are</p> <p>22 the employees who worked in the back?</p> <p>23 A. Yes.</p> <p>24 Q. Under the hours is the hours</p> <p>25 that they worked?</p>
<p style="text-align: right;">Page 95</p> <p>1 N. VOLPER</p> <p>2 -- I mean no cash, tips on credit card he</p> <p>3 made.</p> <p>4 Q. There is a form they fill out</p> <p>5 per night if they have the tips for credit</p> <p>6 cards?</p> <p>7 A. Yes.</p> <p>8 Q. The amounts are every shift that</p> <p>9 they worked added up for the week?</p> <p>10 A. Correct, correct.</p> <p>11 Q. Who does that math?</p> <p>12 A. Staff.</p> <p>13 Q. What do the numbers under meal</p> <p>14 prep mean?</p> <p>15 A. Meal prep is like daily you are</p> <p>16 allowed to charge \$3 tip I guess. Let's</p> <p>17 say from 3:00 to 4:00. We cook for them,</p> <p>18 meal preparation like -- what is the --</p> <p>19 MS. SCHULMAN: Family meal.</p> <p>20 A. Yes.</p> <p>21 Q. You charge them, is that 12</p> <p>22 hours or \$12?</p> <p>23 A. For the total we charge \$3 per</p> <p>24 day. If they work four days, they charge</p> <p>25 12. For five days, we charge 15.</p>	<p style="text-align: right;">Page 97</p> <p>1 N. VOLPER</p> <p>2 A. Correct.</p> <p>3 Q. And under total is the total</p> <p>4 amount of money they were paid for the</p> <p>5 week?</p> <p>6 A. Yes.</p> <p>7 Q. Why is the meal prep listed for</p> <p>8 the front of house not the back of the</p> <p>9 house?</p> <p>10 A. Because by law we cannot charge</p> <p>11 kitchen staff. That's why. Somebody work</p> <p>12 in the kitchen, you cannot charge.</p> <p>13 Q. What position is Pedro Morales</p> <p>14 in?</p> <p>15 A. Line cook?</p> <p>16 Q. Carlos Chusan?</p> <p>17 A. Line cook also.</p> <p>18 Q. Daniel Bonilla?</p> <p>19 A. Line cook.</p> <p>20 Q. Gonzalez Amaro?</p> <p>21 A. I don't recall this guy. Maybe</p> <p>22 dishwasher.</p> <p>23 Q. Abel?</p> <p>24 A. Maybe dishwasher.</p> <p>25 Q. Rami Lucera?</p>

25 (Pages 94 - 97)

<p style="text-align: right;">Page 98</p> <p>1 N. VOLPER</p> <p>2 A. Line cook.</p> <p>3 Q. Turn to next Page 2, plaintiff</p> <p>4 27 to 28. Do you know what these</p> <p>5 documents are?</p> <p>6 A. Time cards.</p> <p>7 Q. These are the time cards who</p> <p>8 worked from July 19th to July 25, 2021?</p> <p>9 A. Yes.</p> <p>10 Q. If you turn to the next page</p> <p>11 plaintiff's 29, if you go to the last name</p> <p>12 on this list Alessandro Arduini, what was</p> <p>13 their position?</p> <p>14 MR. SEGAL: We provided that</p> <p>15 information. Objection.</p> <p>16 A. I cannot recall. Oh, bartender.</p> <p>17 Q. He is a bartender?</p> <p>18 A. Yes.</p> <p>19 MR. SEGAL: I gave you the names</p> <p>20 which I didn't have to.</p> <p>21 MS. SCHULMAN: This is off the</p> <p>22 record.</p> <p>23 (Whereupon, an off-the-record</p> <p>24 discussion was held.)</p> <p>25 MR. DiGIULIO: Back on the</p>	<p style="text-align: right;">Page 100</p> <p>1 N. VOLPER</p> <p>2 A. Crow was -- nobody was involved</p> <p>3 in 2016 with us.</p> <p>4 Q. Crow came after 2016 at some</p> <p>5 point, correct?</p> <p>6 MR. SEGAL: Asked and answered.</p> <p>7 I think he said after the pandemic.</p> <p>8 MS. SCHULMAN: No, he didn't.</p> <p>9 A. I can't give exactly the dates.</p> <p>10 I'm sorry. I don't know. When I don't</p> <p>11 know, I don't know.</p> <p>12 Q. Did you ask Crow if they had</p> <p>13 records of Nino Martinenko's pay stubs</p> <p>14 from 2018?</p> <p>15 A. We asked for all the records.</p> <p>16 Q. That Crow have?</p> <p>17 A. That they have to give us, yes.</p> <p>18 Q. How did you get the pay stubs</p> <p>19 that you had?</p> <p>20 A. They sent to me.</p> <p>21 Q. Ebed?</p> <p>22 A. Ebed or his brother, I don't</p> <p>23 remember who it was.</p> <p>24 Q. He sent them to you because you</p> <p>25 asked?</p>
<p style="text-align: right;">Page 99</p> <p>1 N. VOLPER</p> <p>2 record.</p> <p>3 Q. If you go back to Exhibit 4</p> <p>4 which is plaintiff Nino Martinenko's pay</p> <p>5 stubs?</p> <p>6 A. Okay.</p> <p>7 Q. Please take a look at these pay</p> <p>8 stubs. They are only from 2021.</p> <p>9 A. Let me take a look. They are</p> <p>10 2022 also.</p> <p>11 Q. Correct.</p> <p>12 Did the restaurant issue pay</p> <p>13 stubs to plaintiff Ms. Martinenko in 2016</p> <p>14 and 2018?</p> <p>15 A. 2016 to 2018?</p> <p>16 Q. Yes.</p> <p>17 A. Not sure.</p> <p>18 Q. Did you look for those pay</p> <p>19 stubs?</p> <p>20 A. Yes.</p> <p>21 Q. Where did you look?</p> <p>22 A. Looked in the office and</p> <p>23 restaurant, in the basement.</p> <p>24 Q. Did you ask Crow if they had</p> <p>25 records of that?</p>	<p style="text-align: right;">Page 101</p> <p>1 N. VOLPER</p> <p>2 A. Yes. We asked the documents.</p> <p>3 Q. Before Crow was involved, did</p> <p>4 the restaurant issue pay stubs?</p> <p>5 A. Before Crow was involved, no.</p> <p>6 (Whereupon, Bates D871 to 933</p> <p>7 was hereby marked as Defendant's</p> <p>8 Exhibit 6 for identification, as of</p> <p>9 this date.)</p> <p>10 Q. This is marked Exhibit 6. This</p> <p>11 document is produced by plaintiff in this</p> <p>12 litigation. We Bates stamped them.</p> <p>13 Exhibit 6 is Bates D871 through 933.</p> <p>14 Please take a look at these documents.</p> <p>15 Are these the checks that you issued to</p> <p>16 plaintiff, Dagmara Huk?</p> <p>17 A. Yes.</p> <p>18 Q. Did you make these images?</p> <p>19 A. Absolutely not.</p> <p>20 MR. SEGAL: Do you mean did he</p> <p>21 copy the checks?</p> <p>22 Q. Did you make this document, the</p> <p>23 images of the check?</p> <p>24 A. Yes.</p> <p>25 MR. SEGAL: Objection. Can you</p>

<p style="text-align: right;">Page 102</p> <p>1 N. VOLPER</p> <p>2 rephrase the question please? Make</p> <p>3 means create. Do you mean did he copy</p> <p>4 the checks?</p> <p>5 A. Let me explain. I am going to</p> <p>6 explain. I take copies of this checks</p> <p>7 from the bank. That's it. I don't make</p> <p>8 it. I make the copy.</p> <p>9 MS. SCHULMAN: So you took, the</p> <p>10 bank statements included a photocopy</p> <p>11 of the check, correct?</p> <p>12 THE WITNESS: Correct.</p> <p>13 MS. SCHULMAN: And to put this</p> <p>14 document Exhibit 6 together, you</p> <p>15 pulled out from the bank statement the</p> <p>16 pictures of Dagmara's check and put</p> <p>17 them on one page to make copy?</p> <p>18 THE WITNESS: Correct.</p> <p>19 Q. We will mark this as Exhibit 7.</p> <p>20 (Whereupon, Bates D883 to D933</p> <p>21 was marked as Defendant's Exhibit 7</p> <p>22 for identification as of this date by</p> <p>23 the Reporter.)</p> <p>24 Q. Again, these are documents</p> <p>25 defense has produced in this litigation.</p>	<p style="text-align: right;">Page 104</p> <p>1 N. VOLPER</p> <p>2 because of the salary position.</p> <p>3 Q. The back of house doesn't</p> <p>4 include tips, correct?</p> <p>5 A. The kitchen, no.</p> <p>6 Q. So to the extent that these wage</p> <p>7 statements reflect tips, the back of house</p> <p>8 doesn't have that, correct?</p> <p>9 A. No, they don't do.</p> <p>10 Q. That's the only difference?</p> <p>11 A. Yes. They don't collect tips.</p> <p>12 Q. When the restaurant issues these</p> <p>13 pay stubs they give the pay stubs to the</p> <p>14 employees in paper form or electronic?</p> <p>15 A. We give them in paper form like</p> <p>16 this together with a check.</p> <p>17 Q. Before the restaurant started</p> <p>18 issuing these paper pay stubs before Crow</p> <p>19 got involved, did the restaurant provide</p> <p>20 any documents that showed the pay rates</p> <p>21 and the hours worked?</p> <p>22 A. Yes. Hours. We put in the</p> <p>23 system how many hours and stuff like that.</p> <p>24 As you can see the document that you</p> <p>25 showed me before with all this stuff, they</p>
<p style="text-align: right;">Page 103</p> <p>1 N. VOLPER</p> <p>2 We Bates stamped them. They are Bates</p> <p>3 D883 through 933. Are these the pay stubs</p> <p>4 that the restaurant issued to the</p> <p>5 plaintiff, Dagmara Huk?</p> <p>6 A. Yes.</p> <p>7 Q. Do these pay stubs accurately</p> <p>8 reflect the amounts the restaurant paid to</p> <p>9 Ms. Huk for that pay period?</p> <p>10 A. I was not involved, but I assume</p> <p>11 that they are accurate.</p> <p>12 Q. For these pay statements, did</p> <p>13 you ask Crow to give them to you so you</p> <p>14 could give them to your attorney?</p> <p>15 A. Correct.</p> <p>16 Q. Have all of the pay stubs that</p> <p>17 the restaurant issued to the</p> <p>18 front-of-house employees contain the same</p> <p>19 category of information as are in these?</p> <p>20 A. Correct.</p> <p>21 Q. And all the pay stubs that the</p> <p>22 restaurant issued to the back-of-house</p> <p>23 employees also contained the same</p> <p>24 information?</p> <p>25 A. Only the chef, I don't think so</p>	<p style="text-align: right;">Page 105</p> <p>1 N. VOLPER</p> <p>2 are required to sign.</p> <p>3 Q. Just to pull up Exhibit 6 or 5.</p> <p>4 These documents are from July of 2021,</p> <p>5 right?</p> <p>6 A. I have to take a look again.</p> <p>7 Q. Sure.</p> <p>8 A. This particular July, yes.</p> <p>9 July 19th to July 25, 2021.</p> <p>10 Q. That document does not say how</p> <p>11 many hours they worked, correct, first</p> <p>12 page plaintiff 25?</p> <p>13 A. This page?</p> <p>14 Q. Yes.</p> <p>15 A. Here, no. We give the rest of</p> <p>16 the employees so they can review. That's</p> <p>17 why we separate the hours, we separate</p> <p>18 tips, deductions so they can review this</p> <p>19 information is correct.</p> <p>20 MS. SCHULMAN: Before Crow got</p> <p>21 involved, did the employees have to</p> <p>22 sign a document like plaintiff 25 when</p> <p>23 they received their check?</p> <p>24 THE WITNESS: Like this?</p> <p>25 MS. SCHULMAN: Like the first</p>

27 (Pages 102 - 105)

<p style="text-align: right;">Page 106</p> <p>1 N. VOLPER</p> <p>2 page.</p> <p>3 THE WITNESS: Yes.</p> <p>4 MS. SCHULMAN: And then the</p> <p>5 second page of Exhibit 5, Plaintiff's</p> <p>6 Exhibit 26, was this document, this</p> <p>7 type of document provided to the</p> <p>8 employees?</p> <p>9 THE WITNESS: Correct.</p> <p>10 MS. SCHULMAN: Were they given a</p> <p>11 copy or were they shown a copy?</p> <p>12 THE WITNESS: I don't remember</p> <p>13 that, but they obviously have all the</p> <p>14 information. By signing here, they</p> <p>15 check everything in the back which is</p> <p>16 correct. They compare the tips, they</p> <p>17 compare the hours. If they see any</p> <p>18 discrepancy, we was aware of that.</p> <p>19 MS. SCHULMAN: Before Crow was</p> <p>20 involved, did the documents provided</p> <p>21 that was like plaintiff's 26 contain</p> <p>22 the same category of information that</p> <p>23 are listed on plaintiff's 26?</p> <p>24 THE WITNESS: Can you be more</p> <p>25 specific?</p>	<p style="text-align: right;">Page 108</p> <p>1 N. VOLPER</p> <p>2 pay before Crow was involved contained</p> <p>3 exactly the same type of information?</p> <p>4 THE WITNESS: Correct.</p> <p>5 Q. Is there a set pay date at the</p> <p>6 restaurant?</p> <p>7 A. Usually Friday.</p> <p>8 Q. And that's every week?</p> <p>9 A. Yes.</p> <p>10 Q. Has that ever changed?</p> <p>11 A. Ever changed?</p> <p>12 Q. Yes.</p> <p>13 A. I don't believe so, no. Pretty</p> <p>14 much it is the standard.</p> <p>15 Q. If you can turn to Exhibit 7 on</p> <p>16 the page marked D883, the first page?</p> <p>17 A. Okay.</p> <p>18 Q. This pay period is from</p> <p>19 August 24, 2020 through August 30, 2020,</p> <p>20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. Next to that it says the pay</p> <p>23 date is August 30, 2020, correct?</p> <p>24 A. Yes. That's the way it says</p> <p>25 here.</p>
<p style="text-align: right;">Page 107</p> <p>1 N. VOLPER</p> <p>2 MS. SCHULMAN: We are looking at</p> <p>3 plaintiff's 26. For front of house it</p> <p>4 was name, hours, tips, and meal prep.</p> <p>5 THE WITNESS: Okay.</p> <p>6 MS. SCHULMAN: Prior to Crow</p> <p>7 being involved, is that the same</p> <p>8 information that was provided to the</p> <p>9 front-of-house employees with their</p> <p>10 paychecks?</p> <p>11 THE WITNESS: Yes. It is the</p> <p>12 same information provided for review,</p> <p>13 for them to review.</p> <p>14 MS. SCHULMAN: Let's go back to</p> <p>15 plaintiff's 26. Again, I am asking</p> <p>16 about the time period before Crow was</p> <p>17 involved. Is the document that was</p> <p>18 shown, the back of house when they got</p> <p>19 their pay, did it contain their names,</p> <p>20 their hours worked, and their total --</p> <p>21 THE WITNESS: Yes, exactly the</p> <p>22 same the way it is.</p> <p>23 MS. SCHULMAN: So this type of</p> <p>24 document, plaintiff's 26, which was</p> <p>25 shown to employees when they got their</p>	<p style="text-align: right;">Page 109</p> <p>1 N. VOLPER</p> <p>2 Q. But the pay date could not have</p> <p>3 been August 30, 2020, right?</p> <p>4 A. I don't remember. Usually</p> <p>5 supposed to be Friday. Yes, it cannot be.</p> <p>6 We pay like the following week.</p> <p>7 Q. The front-of-house employees</p> <p>8 sometimes work more than forty hours a</p> <p>9 week, right?</p> <p>10 A. Rarely.</p> <p>11 Q. But it does happen, right?</p> <p>12 A. Sometimes happens.</p> <p>13 Q. When front-of-house employees</p> <p>14 work more than forty hours a week the</p> <p>15 restaurant pays them the same rate for all</p> <p>16 their hours, right?</p> <p>17 A. I'm not sure. Let me check.</p> <p>18 Q. Let's look at Page 887 in</p> <p>19 Exhibit 7.</p> <p>20 A. Which one?</p> <p>21 MR. SEGAL: 887.</p> <p>22 Q. Bottom right.</p> <p>23 A. Okay.</p> <p>24 Q. This is pay period between</p> <p>25 October 12, 2020 through October 18, 2020.</p>

28 (Pages 106 - 109)

<p style="text-align: right;">Page 110</p> <p>1 N. VOLPER</p> <p>2 If you look down on the hours for Ms. Huk,</p> <p>3 she worked 43 hours and 15 minutes,</p> <p>4 correct?</p> <p>5 A. Yes. That's the POS shows.</p> <p>6 Q. And she was paid \$10 per hour</p> <p>7 for all 43 hours and 15 minutes, right?</p> <p>8 A. Yes.</p> <p>9 Q. She was not paid time and a half</p> <p>10 for the hours over forty that she worked,</p> <p>11 correct?</p> <p>12 A. Looks like she wasn't paid.</p> <p>13 Q. Isn't it true that the</p> <p>14 restaurant did not actually pay the</p> <p>15 front-of-house employees time and a half</p> <p>16 for overtime?</p> <p>17 MR. SEGAL: Objection.</p> <p>18 MS. SCHULMAN: You can answer.</p> <p>19 Q. You have to answer.</p> <p>20 A. So is it true what?</p> <p>21 Q. Isn't it true that the</p> <p>22 restaurant does not pay front-of-house</p> <p>23 employees time and a half for hours worked</p> <p>24 over forty?</p> <p>25 A. I don't know if it is true or</p>	<p style="text-align: right;">Page 112</p> <p>1 N. VOLPER</p> <p>2 Q. This is Exhibit 8.</p> <p>3 (Whereupon, Plaintiff's 1</p> <p>4 through 24 was marked as Defendant's</p> <p>5 Exhibit 8 for identification as of</p> <p>6 this date by the Reporter.)</p> <p>7 Q. These documents were in</p> <p>8 plaintiff's possession. They are marked</p> <p>9 Plaintiff's 1 through 24.</p> <p>10 A. Okay.</p> <p>11 Q. Are these pay stubs that the</p> <p>12 restaurant issued to various employees?</p> <p>13 A. Yes.</p> <p>14 Q. And these are all front-of-house</p> <p>15 employees, correct?</p> <p>16 A. I don't check all of them but</p> <p>17 no, I don't think so. Maybe.</p> <p>18 Q. On the first page plaintiff's 1</p> <p>19 is a pay stub for Alexander Rynkovsky for</p> <p>20 March 28, 2021, correct?</p> <p>21 A. Correct.</p> <p>22 Q. He worked 53 hours and</p> <p>23 16 minutes, correct?</p> <p>24 A. Correct.</p> <p>25 Q. He was paid \$10 an hour for all</p>
<p style="text-align: right;">Page 111</p> <p>1 N. VOLPER</p> <p>2 not but this particular one, looks like it</p> <p>3 is not done correctly.</p> <p>4 Q. Let's look at a different</p> <p>5 example then. We can look back to Nino</p> <p>6 Martinenko's time records. I believe it</p> <p>7 is Exhibit 4. If you could turn to page</p> <p>8 D948.</p> <p>9 A. Thank you.</p> <p>10 Q. Ms. Martinenko's worked during</p> <p>11 this pay period 45 hours 29 minutes,</p> <p>12 correct?</p> <p>13 A. That is being reflected here.</p> <p>14 Q. Yes. And that's for one week's</p> <p>15 worth of time, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And she was paid \$10 an hour for</p> <p>18 all 45 hours, right?</p> <p>19 A. Yes.</p> <p>20 Q. She was not paid any overtime,</p> <p>21 correct?</p> <p>22 A. In this particular, no.</p> <p>23 Q. Do you have any time in which</p> <p>24 plaintiff was paid overtime?</p> <p>25 A. Not sure about it.</p>	<p style="text-align: right;">Page 113</p> <p>1 N. VOLPER</p> <p>2 53 hours, correct?</p> <p>3 A. Yes. Looks like.</p> <p>4 Q. If you go to the next page,</p> <p>5 Eduardo Perez on plaintiff's 2. This was</p> <p>6 pay date March 28, 2021. He worked</p> <p>7 48 hours and 54 minutes that week,</p> <p>8 correct? It is on the back.</p> <p>9 A. Yes.</p> <p>10 Q. And he was paid \$10 an hour for</p> <p>11 each of those hours, correct?</p> <p>12 A. Correct.</p> <p>13 Q. And he was not paid time and a</p> <p>14 half for overtime, correct?</p> <p>15 A. Correct.</p> <p>16 Q. Back-of-house employees, kitchen</p> <p>17 employees at the restaurant they sometimes</p> <p>18 work more than forty hours a week,</p> <p>19 correct?</p> <p>20 A. Sometimes, yes.</p> <p>21 Q. Does the restaurant pay them</p> <p>22 time and a half for every hour over forty?</p> <p>23 A. I hope so.</p> <p>24 Q. Do you know if the restaurant</p> <p>25 pays --</p>

<p style="text-align: right;">Page 114</p> <p>1 N. VOLPER</p> <p>2 A. I'm not sure.</p> <p>3 Q. Do you have any documents that</p> <p>4 show that the restaurant pays time and a</p> <p>5 half for employees who work in the kitchen</p> <p>6 for overtime?</p> <p>7 A. Not that I know of.</p> <p>8 Q. Would it be reflected in the pay</p> <p>9 statement?</p> <p>10 A. In the pay statement?</p> <p>11 Q. Yes.</p> <p>12 A. Should be.</p> <p>13 Q. And you have access to these pay</p> <p>14 statements?</p> <p>15 A. Front or back?</p> <p>16 Q. Back-of-house employees?</p> <p>17 A. I do, yes.</p> <p>18 Q. Do you know what spread-of-hours</p> <p>19 pay is?</p> <p>20 A. No idea.</p> <p>21 Q. Do you know the restaurant is</p> <p>22 required to pay employees an extra hour</p> <p>23 minimum wage for any work day that lasts</p> <p>24 more than ten hours?</p> <p>25 A. Basically, I don't handle all</p>	<p style="text-align: right;">Page 116</p> <p>1 N. VOLPER</p> <p>2 Q. When did you do that?</p> <p>3 A. When did you do that?</p> <p>4 Q. When?</p> <p>5 A. Different time periods.</p> <p>6 Q. Did you keep the documents that</p> <p>7 you gave them?</p> <p>8 A. Some of them I have, yes.</p> <p>9 Q. You have kept some of them?</p> <p>10 A. Yes.</p> <p>11 Q. Where are they?</p> <p>12 A. Most likely in the office.</p> <p>13 Q. Did you give this filled out</p> <p>14 document to plaintiff, Nino Martinenko?</p> <p>15 A. I have no idea.</p> <p>16 Q. Did you give one of these</p> <p>17 documents to Dagmara Huk?</p> <p>18 A. No idea. Most likely not.</p> <p>19 Q. Which employee did you give this</p> <p>20 document to?</p> <p>21 A. By names?</p> <p>22 Q. Yes.</p> <p>23 A. I mean, I can provide that</p> <p>24 information but I don't have in front of</p> <p>25 me.</p>
<p style="text-align: right;">Page 115</p> <p>1 N. VOLPER</p> <p>2 this stuff. I pass the information to the</p> <p>3 accountant. I don't produce any of this</p> <p>4 statement.</p> <p>5 Q. The restaurant does not pay</p> <p>6 spread-of-hours premium to any of its</p> <p>7 employees, correct?</p> <p>8 A. I have no idea. I am not aware.</p> <p>9 MR. DiGIULIO: Let's take five.</p> <p>10 THE WITNESS: Sure.</p> <p>11 (Whereupon, a short recess was</p> <p>12 taken.)</p> <p>13 MR. DiGIULIO: Back on the</p> <p>14 record.</p> <p>15 Can we have this marked?</p> <p>16 (Whereupon, wage notice document</p> <p>17 was marked as Defendant's Exhibit 9</p> <p>18 for identification as of this date by</p> <p>19 the Reporter.)</p> <p>20 Q. This is a blank form wage notice</p> <p>21 document from the New York Department of</p> <p>22 Labor. It is Exhibit No. 9. Have you</p> <p>23 ever filled out and given this type of</p> <p>24 document to any kind of of your employees?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 117</p> <p>1 N. VOLPER</p> <p>2 Q. If you didn't give this document</p> <p>3 to Nino Martinenko or Dagmara Huk, why do</p> <p>4 you believe you gave it to other</p> <p>5 employees?</p> <p>6 A. Why do I believe?</p> <p>7 Q. Yes.</p> <p>8 A. Because it was done.</p> <p>9 Q. Why did you not give it to</p> <p>10 Dagmara?</p> <p>11 A. I never say I don't give it to</p> <p>12 Dagmara. I said I don't remember giving</p> <p>13 to her or to Nino.</p> <p>14 Q. Which person at the restaurant</p> <p>15 gave the filled out form to the</p> <p>16 restaurant's employees?</p> <p>17 A. Which person?</p> <p>18 Q. Yes.</p> <p>19 A. Me.</p> <p>20 Q. You did?</p> <p>21 A. Yes.</p> <p>22 Q. Who filled out the form when you</p> <p>23 gave it to the employee?</p> <p>24 A. Well, they fill up and sign this</p> <p>25 portion, signature and stuff.</p>

<p style="text-align: right;">Page 118</p> <p>1 N. VOLPER</p> <p>2 Q. Who fills out the employer</p> <p>3 information in No. 1?</p> <p>4 A. This I did.</p> <p>5 Q. And you filled out No. 3, 4, 5,</p> <p>6 6, 7?</p> <p>7 A. Yes. The rest is from them.</p> <p>8 Q. Can you give us the name of a</p> <p>9 single employee that you gave a filled out</p> <p>10 version of this copy to?</p> <p>11 A. Not at this moment.</p> <p>12 Q. Do you recall when you gave this</p> <p>13 filled out document to any employer?</p> <p>14 A. Depends on the period of time.</p> <p>15 A. Can be three months ago, can you</p> <p>16 four months ago.</p> <p>17 Q. Do you recall giving this filled</p> <p>18 out document four months ago to an</p> <p>19 employee?</p> <p>20 A. To employee?</p> <p>21 Q. Yes.</p> <p>22 A. Let me -- I think I gave to</p> <p>23 Hailey, the bartender.</p> <p>24 Q. Did you provide this document to</p> <p>25 any employee before 2022?</p>	<p style="text-align: right;">Page 120</p> <p>1 N. VOLPER</p> <p>2 Q. When did you become aware of the</p> <p>3 requirement to give this?</p> <p>4 A. Which one? This one?</p> <p>5 Q. Yes.</p> <p>6 A. I became aware of this</p> <p>7 requirement, I cannot give you specific</p> <p>8 time time period but I was aware of this</p> <p>9 requirement since we have one case which I</p> <p>10 cannot locate, somebody -- employee's</p> <p>11 record of this form, I was penalized of</p> <p>12 that.</p> <p>13 THE WITNESS: Can I add</p> <p>14 something?</p> <p>15 MR. SEGAL: No.</p> <p>16 THE WITNESS: Okay. I am not</p> <p>17 allowed.</p> <p>18 (Whereupon, Bates D1 to D6 was</p> <p>19 marked as Defendant's Exhibit 10 for</p> <p>20 identification as of this date by the</p> <p>21 Reporter.)</p> <p>22 MR. DiGIULIO: This is</p> <p>23 Exhibit 10. This document is produced</p> <p>24 by defendants. This is Bates stamped</p> <p>25 D1 through D6.</p>
<p style="text-align: right;">Page 119</p> <p>1 N. VOLPER</p> <p>2 A. Before 2022?</p> <p>3 Q. Yes.</p> <p>4 A. I'm not a hundred percent sure</p> <p>5 if I did or not.</p> <p>6 Q. Why did you begin giving the</p> <p>7 filled out documents to employees?</p> <p>8 A. Why?</p> <p>9 Q. Yes.</p> <p>10 A. Because I guess it is required.</p> <p>11 Q. When did you begin?</p> <p>12 A. Notice of acknowledgement.</p> <p>13 Q. When did you become aware of the</p> <p>14 requirement?</p> <p>15 A. When I become aware -- we have,</p> <p>16 I think something in the past which I</p> <p>17 cannot locate, like employee this --</p> <p>18 usually like employees, they know if they</p> <p>19 work in the restaurant they are getting</p> <p>20 tips, there is a possibility of tip to</p> <p>21 employees. They are required to fill form</p> <p>22 27, I believe which are cash report form.</p> <p>23 I believe the plaintiffs filled up that</p> <p>24 form which is required to fill every</p> <p>25 month.</p>	<p style="text-align: right;">Page 121</p> <p>1 N. VOLPER</p> <p>2 Q. Are these the tax documents</p> <p>3 issued to Nino Martinenko and Dagmara Huk?</p> <p>4 A. I cannot confirm hundred percent</p> <p>5 but looks like the documents.</p> <p>6 MR. SEGAL: Can you wait for him</p> <p>7 to ask you a question?</p> <p>8 THE WITNESS: Yes. He did ask.</p> <p>9 MR. DiGIULIO: I did ask him a</p> <p>10 question.</p> <p>11 Q. So the first D1, D2, D3, are</p> <p>12 these 1099 that the restaurant issued to</p> <p>13 Nino Martinenko?</p> <p>14 A. This looks like 1099 form, yes.</p> <p>15 Q. The next page is D4 which is a</p> <p>16 W-2 for 2021 for plaintiff Dagmara Huk; is</p> <p>17 that correct?</p> <p>18 A. I'm sorry. Which one?</p> <p>19 Q. D4 is a W-2 that the restaurant</p> <p>20 issued to Dagmara Huk in 2021, correct?</p> <p>21 A. Yes. Looks like, yes.</p> <p>22 Q. D5 is a W-2 from 2020 for Ms.</p> <p>23 Huk, correct?</p> <p>24 A. 2020?</p> <p>25 Q. Yes.</p>

<p style="text-align: right;">Page 122</p> <p>1 N. VOLPER</p> <p>2 A. Yes.</p> <p>3 Q. And then the last D6 is W-2</p> <p>4 issued to the plaintiff, Nino Martinenko,</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. For the first three pages of the</p> <p>8 1099, who prepared these 1099s for the</p> <p>9 restaurant?</p> <p>10 A. Who prepared them -- I guess it</p> <p>11 was prepared by CPA.</p> <p>12 Q. Who is the CPA for the</p> <p>13 restaurant?</p> <p>14 A. At that time I don't remember</p> <p>15 who is it. It can be the same company.</p> <p>16 Q. Same company as Crow?</p> <p>17 A. Yes. It is 2016. It is very</p> <p>18 long time ago. I don't remember all this</p> <p>19 stuff.</p> <p>20 Q. You paid the plaintiff, Ms.</p> <p>21 Martinenko, on a 1099 for 2016, 2017,</p> <p>22 2018, right?</p> <p>23 A. Yes.</p> <p>24 Q. Did the restaurant pay all of</p> <p>25 its employees 1099 for these years?</p>	<p style="text-align: right;">Page 124</p> <p>1 N. VOLPER</p> <p>2 missing cash -- cash tips which Nino</p> <p>3 Martinenko failed to provide on the form</p> <p>4 27, I believe so. That maybe is missing.</p> <p>5 Yeah.</p> <p>6 Q. Did you gather these tax</p> <p>7 documents for this litigation?</p> <p>8 A. Do I what?</p> <p>9 Q. Did you gather them and give</p> <p>10 them to your attorney?</p> <p>11 A. This one?</p> <p>12 Q. Yes.</p> <p>13 A. I believe so, yes.</p> <p>14 Q. Where did get it from?</p> <p>15 A. I get it from the -- my records.</p> <p>16 I looked at my records and gave it to</p> <p>17 them.</p> <p>18 Q. Where are the records?</p> <p>19 A. In the office.</p> <p>20 Q. On the computer?</p> <p>21 A. Some of them on the computer,</p> <p>22 some of them on paper.</p> <p>23 Q. Do you have other 1099s and W-2s</p> <p>24 that the restaurant issued to its</p> <p>25 employees?</p>
<p style="text-align: right;">Page 123</p> <p>1 N. VOLPER</p> <p>2 A. I don't have records in front of</p> <p>3 me but for sure Nino Martinenko, yes.</p> <p>4 Q. When did the restaurant begin</p> <p>5 paying its employees on W-2?</p> <p>6 A. When?</p> <p>7 Q. Yes.</p> <p>8 A. Three or four years ago.</p> <p>9 Q. Is it when the restaurant began</p> <p>10 working with Crow?</p> <p>11 A. Yes.</p> <p>12 Q. Before Crow, was the restaurant</p> <p>13 issuing 1099 for its employees?</p> <p>14 A. That's why I said I'm not</p> <p>15 hundred percent sure. It is long time</p> <p>16 ago. The way I look here, Nino Martinenko</p> <p>17 was issued 1099 for 2016, 2017.</p> <p>18 Q. Do these documents accurately</p> <p>19 reflect the wages and tips that these</p> <p>20 plaintiffs received from the restaurant in</p> <p>21 the respective years?</p> <p>22 A. I have to look into that records</p> <p>23 but -- I have to look into that records.</p> <p>24 I don't know if that's correct or not.</p> <p>25 Most likely it is correct. Maybe it is</p>	<p style="text-align: right;">Page 125</p> <p>1 N. VOLPER</p> <p>2 MR. SEGAL: Objection.</p> <p>3 Q. You can answer.</p> <p>4 THE WITNESS: I stay with the</p> <p>5 objection.</p> <p>6 MR. SEGAL: You have to answer.</p> <p>7 THE WITNESS: I have to answer?</p> <p>8 MR. SEGAL: Yes.</p> <p>9 THE WITNESS: Doesn't work like</p> <p>10 court?</p> <p>11 MR. SEGAL: No.</p> <p>12 A. Can you repeat the question?</p> <p>13 Q. Sure.</p> <p>14 MR. DiGIULIO: Can you read back</p> <p>15 the question?</p> <p>16 (Whereupon, the referred to</p> <p>17 question was read back by the</p> <p>18 Reporter.)</p> <p>19 A. We have issued. Some of them</p> <p>20 like contractors, or cleaning services, or</p> <p>21 anything like that.</p> <p>22 MR. SEGAL: It is a yes or no</p> <p>23 question.</p> <p>24 A. To employees, most likely yes.</p> <p>25 Q. Do you have 1099s or W-2s that</p>

<p style="text-align: right;">Page 126</p> <p>1 N. VOLPER</p> <p>2 the restaurant issued to the back-of-house</p> <p>3 employees?</p> <p>4 A. Kitchen staff?</p> <p>5 Q. Yes.</p> <p>6 A. Do I have them?</p> <p>7 Q. Yes.</p> <p>8 A. Not sure. If I have them or</p> <p>9 not, not sure. Not sure.</p> <p>10 Q. Does the restaurant require new</p> <p>11 hires to fill out tax documents?</p> <p>12 A. Yes.</p> <p>13 Q. Does the restaurant require new</p> <p>14 employees to fill out W-4 99s?</p> <p>15 A. Yes.</p> <p>16 Q. Does the restaurant require new</p> <p>17 employees to fill out W-9s?</p> <p>18 A. What is W-9? It is a tax form</p> <p>19 required by the -- I think so, yes.</p> <p>20 Q. Does the restaurant maintain the</p> <p>21 filled out W-4s 99s?</p> <p>22 A. I hope so, yes. But I never</p> <p>23 looked for that. I hope so.</p> <p>24 Q. Does your accountant have copies</p> <p>25 of the W-2s and 1099s that are issued to</p>	<p style="text-align: right;">Page 128</p> <p>1 N. VOLPER</p> <p>2 D1094?</p> <p>3 A. Okay.</p> <p>4 Q. On the bottom it says pay</p> <p>5 preparer use only. Print type preparer's</p> <p>6 name. Ebed Rada (ph). Is that the Ebed</p> <p>7 you were speaking about earlier?</p> <p>8 A. Correct.</p> <p>9 Q. 2016, he was with the firm Tax</p> <p>10 Zone; is that correct?</p> <p>11 A. Looks like.</p> <p>12 Q. On page 191 gross receipts or</p> <p>13 sales. It says the restaurant had over</p> <p>14 \$1.3 million in sales, correct?</p> <p>15 A. What was the question?</p> <p>16 Q. 1094, on that page on line 1C,</p> <p>17 top line on the right in the column?</p> <p>18 A. Okay.</p> <p>19 Q. It says the restaurant had over</p> <p>20 \$1.3 million in sales, correct?</p> <p>21 A. Yes.</p> <p>22 Q. To the best of your knowledge</p> <p>23 that's accurate?</p> <p>24 A. Yes.</p> <p>25 Q. Line 8t where it says salaries</p>
<p style="text-align: right;">Page 127</p> <p>1 N. VOLPER</p> <p>2 the front and back-of-house employees?</p> <p>3 A. I believe so.</p> <p>4 (Whereupon, D1093 to D1194 was</p> <p>5 marked as Defendant's Exhibit 11 for</p> <p>6 identification as of this date by the</p> <p>7 Reporter.)</p> <p>8 Q. This is for you, Mr. Volper.</p> <p>9 A. Yes, sir.</p> <p>10 Q. These are documents that the</p> <p>11 defense produced in this litigation. They</p> <p>12 were produced without Bates so the</p> <p>13 Exhibit 11 is marked Bates D1093 through</p> <p>14 1194.</p> <p>15 A. Correct.</p> <p>16 Q. These are the 2016 tax returns</p> <p>17 for the restaurant. Is this document the</p> <p>18 2016 tax returns for 212 Steakhouse</p> <p>19 Incorporated?</p> <p>20 A. Correct.</p> <p>21 Q. To the best of your knowledge,</p> <p>22 are these tax returns accurate?</p> <p>23 A. To the best of my knowledge,</p> <p>24 yes, it is accurate.</p> <p>25 Q. If you turn to the second page</p>	<p style="text-align: right;">Page 129</p> <p>1 N. VOLPER</p> <p>2 and wages?</p> <p>3 A. Huh-huh.</p> <p>4 Q. Tax returns state that the</p> <p>5 restaurant paid no salary or wages. Do</p> <p>6 you see that?</p> <p>7 A. Yes.</p> <p>8 Q. But you had employees in 2016,</p> <p>9 correct?</p> <p>10 A. Correct.</p> <p>11 Q. If you turn to page 13, D1105 on</p> <p>12 the bottom right.</p> <p>13 A. Okay.</p> <p>14 Q. This is under the schedule of</p> <p>15 other deductions. It provides restaurant</p> <p>16 spent \$362,657 to independent contractors;</p> <p>17 is that correct?</p> <p>18 A. Yes.</p> <p>19 Q. Who are your independent</p> <p>20 contractors?</p> <p>21 A. Who they are?</p> <p>22 Q. Yes.</p> <p>23 A. Like I mentioned before, can be</p> <p>24 some kind of -- Nino Martinenko was --</p> <p>25 Q. Paid that way?</p>

<p style="text-align: right;">Page 130</p> <p>1 N. VOLPER</p> <p>2 A. Yes.</p> <p>3 Q. Is this the way that the</p> <p>4 restaurant paid its employees in 2016?</p> <p>5 A. Employees and independent</p> <p>6 contractors, yes.</p> <p>7 Q. Front-of-house staff were paid</p> <p>8 this way, correct?</p> <p>9 A. Yes.</p> <p>10 Q. And the back-of-house staff too?</p> <p>11 A. I can't recall that.</p> <p>12 Q. So the restaurant issued 1099s</p> <p>13 for the front-of-house staff in 2016,</p> <p>14 correct?</p> <p>15 A. Most likely.</p> <p>16 Q. Do you have all the 1099s that</p> <p>17 the restaurant issued from the 2016 to the</p> <p>18 present?</p> <p>19 A. I hope so.</p> <p>20 Q. If you flip back a few pages to</p> <p>21 D1101 schedule K1, bottom right corner?</p> <p>22 A. Yes.</p> <p>23 Q. Under Section E on the left-hand</p> <p>24 side of the page it says the shareholder's</p> <p>25 name, Nikolay Volper. That's you,</p>	<p style="text-align: right;">Page 132</p> <p>1 N. VOLPER</p> <p>2 Q. Why did the restaurant pay the</p> <p>3 front and back-of-house staff on the 1099</p> <p>4 in 2016?</p> <p>5 A. Why?</p> <p>6 Q. Yes.</p> <p>7 A. I was under tremendous pressure</p> <p>8 financially.</p> <p>9 MS. SCHULMAN: Why did that</p> <p>10 pressure result in you paying the</p> <p>11 front and back of house 1099 rather</p> <p>12 than W-2?</p> <p>13 THE WITNESS: Because we were</p> <p>14 losing money, a lot of money.</p> <p>15 MS. SCHULMAN: And it would be</p> <p>16 more expensive if you paid them on</p> <p>17 W-2?</p> <p>18 THE WITNESS: Pretty much.</p> <p>19 MS. SCHULMAN: Because you have</p> <p>20 to pay more in taxes?</p> <p>21 THE WITNESS: I don't know what</p> <p>22 I have to pay but -- yeah. Some of</p> <p>23 the employees, they want 1099.</p> <p>24 (Whereupon, Bates D1135 to D1173</p> <p>25 was marked as Defendant's Exhibit 12</p>
<p style="text-align: right;">Page 131</p> <p>1 N. VOLPER</p> <p>2 correct?</p> <p>3 A. Yes.</p> <p>4 Q. Under F it says shareholder's</p> <p>5 percentage of stock ownership for tax year</p> <p>6 is a hundred percent, correct?</p> <p>7 A. Yes.</p> <p>8 Q. So in 2016 you owned hundred</p> <p>9 percent of the restaurant, correct?</p> <p>10 A. Yes.</p> <p>11 Q. Moving forward, if the tax</p> <p>12 return for the restaurant says that the</p> <p>13 shareholder's percentage of the stock was</p> <p>14 a hundred percent and your name is under</p> <p>15 A, that reflects that you were a hundred</p> <p>16 percent of the shareholder of the</p> <p>17 restaurant, correct?</p> <p>18 A. Under what? The same column?</p> <p>19 Q. Yes.</p> <p>20 A. I don't know if it says that or</p> <p>21 not.</p> <p>22 Q. If it says that, that would mean</p> <p>23 you were one hundred percent owner of the</p> <p>24 stock of the company, right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 133</p> <p>1 N. VOLPER</p> <p>2 for identification as of this date by</p> <p>3 the Reporter.)</p> <p>4 Q. For the record, these are tax</p> <p>5 documents produced by the defense in this</p> <p>6 litigation. They are Bates stamped D1135</p> <p>7 through D1173. These are the 2017 tax</p> <p>8 returns for 212 Steakhouse Incorporated.</p> <p>9 A. Okay.</p> <p>10 Q. If you look at on the second</p> <p>11 page, D1136 line 1A, it says the gross</p> <p>12 receipt for sales is over \$1.5 million,</p> <p>13 correct?</p> <p>14 A. Yes.</p> <p>15 Q. Sir, the restaurant had over</p> <p>16 \$1.5 million in revenue in 2017, correct?</p> <p>17 A. Correct.</p> <p>18 Q. Page 2 line 8 for under salary</p> <p>19 and wages, tax returns state that the</p> <p>20 restaurant paid no salary or wages,</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. In this year the restaurant paid</p> <p>24 all its front and back-of-house employees</p> <p>25 in 1099, correct?</p>

<p style="text-align: right;">Page 134</p> <p>1 N. VOLPER</p> <p>2 A. Correct.</p> <p>3 Q. Okay. If you look at page D1143</p> <p>4 in the right-hand corner, this reflects</p> <p>5 you owned hundred percent of the company</p> <p>6 in 2017, correct?</p> <p>7 A. Correct.</p> <p>8 (Whereupon, Bates D1174 to D1211</p> <p>9 was marked as Defendant's Exhibit 13</p> <p>10 for identification as of this date by</p> <p>11 the Reporter.)</p> <p>12 Q. For the record, this is marked</p> <p>13 Exhibit 13. It is tax returns produced by</p> <p>14 the defendants. It is Bates D1174 through</p> <p>15 D1211. The plaintiffs have Bates stamped</p> <p>16 them. Is this the document the 2018 tax</p> <p>17 returns for 212 Steakhouse Incorporated?</p> <p>18 A. Yes.</p> <p>19 Q. On the first page line one A for</p> <p>20 gross receipts of sales it says the</p> <p>21 restaurant had over \$1.6 million in sales,</p> <p>22 correct?</p> <p>23 A. Correct.</p> <p>24 Q. So the restaurant had over 1.6</p> <p>25 million in revenue in 2018, correct?</p>	<p style="text-align: right;">Page 136</p> <p>1 N. VOLPER</p> <p>2 the Reporter.)</p> <p>3 MR. DiGIULIO: These are</p> <p>4 documents produces by defense without</p> <p>5 Bates but the plaintiffs have Bates</p> <p>6 stamped these documents D1013 through</p> <p>7 1053.</p> <p>8 Q. Are these the 2019 tax returns</p> <p>9 for 212 Steakhouse Incorporated?</p> <p>10 A. Correct.</p> <p>11 Q. If you go to the third page</p> <p>12 D1015 line 1A. For gross receipts or</p> <p>13 sales it says the restaurant had over \$1.6</p> <p>14 six million in sales, correct?</p> <p>15 A. Yes.</p> <p>16 Q. The restaurant had over \$1.6</p> <p>17 million in gross revenue in 2019, correct?</p> <p>18 A. Gross sales.</p> <p>19 Q. Yes.</p> <p>20 A. Okay.</p> <p>21 Q. On line 8, here it says that the</p> <p>22 salaries and wages paid by 212 Steakhouse</p> <p>23 Incorporated was \$248,780?</p> <p>24 A. Correct.</p> <p>25 Q. Now, if you go to D1025 bottom</p>
<p style="text-align: right;">Page 135</p> <p>1 N. VOLPER</p> <p>2 A. Revenue or sales?</p> <p>3 Q. Gross revenue, \$1.6 million,</p> <p>4 correct?</p> <p>5 A. Yes.</p> <p>6 Q. On line 8 salary and wages it</p> <p>7 states that the restaurant paid no salary</p> <p>8 or wages in 2018, correct.</p> <p>9 A. Correct.</p> <p>10 Q. The restaurant paid all front</p> <p>11 and back of house employees on 1099,</p> <p>12 correct?</p> <p>13 A. Correct.</p> <p>14 Q. If you look at D1181, this</p> <p>15 reflects you were the sole owner of the</p> <p>16 corporation that year, correct?</p> <p>17 A. Huh-huh.</p> <p>18 MS. SCHULMAN: Instead of</p> <p>19 huh-huh you should say yes.</p> <p>20 A. Yes. Yes.</p> <p>21 MR. DiGIULIO: Can we have this</p> <p>22 marked?</p> <p>23 (Whereupon, Bates D1013 to D1053</p> <p>24 was marked as Defendant's Exhibit 14</p> <p>25 for identification as of this date by</p>	<p style="text-align: right;">Page 137</p> <p>1 N. VOLPER</p> <p>2 right, D1025. It is about ten pages from</p> <p>3 where we were.</p> <p>4 A. Okay.</p> <p>5 Q. Under the schedule deduction it</p> <p>6 provides the restaurant spent \$238,635 on</p> <p>7 independent contractors, correct?</p> <p>8 A. Yes. It says like that.</p> <p>9 Q. In 2019 did the restaurant start</p> <p>10 the year paying the front the</p> <p>11 back-of-house staff on 1099 and switch to</p> <p>12 W-2?</p> <p>13 A. Yes.</p> <p>14 Q. Do you know when in 2019 that</p> <p>15 shift happened?</p> <p>16 A. No, I don't know.</p> <p>17 Q. When that shift happened, were</p> <p>18 all the front and back-of-house employees</p> <p>19 moved from 1099 to W-2 at the same time?</p> <p>20 A. I hope so, yes. I was not</p> <p>21 taking care of it.</p> <p>22 (Whereupon, Bates D1054 to D1092</p> <p>23 was marked as Defendant's Exhibit 15</p> <p>24 for identification as of this date by</p> <p>25 the Reporter.)</p>

35 (Pages 134 - 137)

<p style="text-align: right;">Page 138</p> <p>1 N. VOLPER</p> <p>2 Q. This is Exhibit 15. Again,</p> <p>3 these are documents produced by defense to</p> <p>4 plaintiff without Bates numbers.</p> <p>5 Plaintiffs have Bates stamped D1054</p> <p>6 through D1092. Are these the 2020 tax</p> <p>7 returns for 212 Steakhouse Incorporated?</p> <p>8 A. Correct.</p> <p>9 Q. If you turn to the third page</p> <p>10 D1056 line 1A for gross receipts of sales</p> <p>11 that the restaurant had over \$800,000 in</p> <p>12 sales in 2020, correct?</p> <p>13 A. Correct.</p> <p>14 Q. So the restaurant had over</p> <p>15 \$800,000 in gross revenue in 2020,</p> <p>16 correct?</p> <p>17 A. Correct.</p> <p>18 Q. Line 8 for wages, on this</p> <p>19 document it states that the restaurant</p> <p>20 paid \$183,659 in wages, correct?</p> <p>21 A. That's what it says, yes.</p> <p>22 Q. Were all the front and</p> <p>23 back-of-house staff paid on W-2s in 2020?</p> <p>24 A. I believe so.</p> <p>25 Q. From all tax returns we just</p>	<p style="text-align: right;">Page 140</p> <p>1 N. VOLPER</p> <p>2 A. I don't have the calculation</p> <p>3 yet.</p> <p>4 (Whereupon, Bates D1255 to D1381</p> <p>5 was marked as Defendant's Exhibit 16</p> <p>6 for identification as of this date by</p> <p>7 the Reporter.)</p> <p>8 Q. This is Exhibit 16. These are</p> <p>9 documents that the defense have produced</p> <p>10 in this litigation. They were not Bates</p> <p>11 so plaintiff's counsel have provided Bates</p> <p>12 numbers. The numbers on this exhibit are</p> <p>13 D1255 through 1381. Are these tip sheets</p> <p>14 from the restaurant?</p> <p>15 A. Correct.</p> <p>16 Q. Who created the template for</p> <p>17 these sheets?</p> <p>18 A. I don't remember. It is many</p> <p>19 years ago.</p> <p>20 Q. When was the template created?</p> <p>21 A. I don't remember. Since the</p> <p>22 beginning I guess.</p> <p>23 Q. Since the beginning?</p> <p>24 A. Yes. I don't know this</p> <p>25 particular one, but we have this since the</p>
<p style="text-align: right;">Page 139</p> <p>1 N. VOLPER</p> <p>2 went over from 2016 to 2020, who signs tax</p> <p>3 returns for the corporation?</p> <p>4 A. I sign them.</p> <p>5 Q. Are these the tax returns that</p> <p>6 you signed and submitted to the</p> <p>7 government?</p> <p>8 A. Yes.</p> <p>9 Q. Defendants have not produced any</p> <p>10 tax returns --</p> <p>11 MS. SCHULMAN: Off the record.</p> <p>12 (Whereupon, an off-the-record</p> <p>13 discussion was held.)</p> <p>14 MR. DiGIULIO: Back on the</p> <p>15 record.</p> <p>16 Q. The defendants have not produced</p> <p>17 tax returns for 2021. Has the restaurant</p> <p>18 filed its 2021 tax returns?</p> <p>19 A. Not yet. We have an extension.</p> <p>20 Q. When do you plan on filing your</p> <p>21 tax returns?</p> <p>22 A. I want to make sure everything</p> <p>23 is correct and do it soon.</p> <p>24 Q. Were your 2021 sales higher than</p> <p>25 they were in 2020?</p>	<p style="text-align: right;">Page 141</p> <p>1 N. VOLPER</p> <p>2 beginning.</p> <p>3 Q. Who filled out these sheets?</p> <p>4 A. This is strictly filled out by</p> <p>5 employees.</p> <p>6 Q. Does the restaurant have one of</p> <p>7 these sheets per shift?</p> <p>8 A. Every single day you need to</p> <p>9 have that.</p> <p>10 Q. Do they have a separate one if</p> <p>11 they have a lunch shift?</p> <p>12 A. Usually, yes. One is like</p> <p>13 individual person.</p> <p>14 MR. SEGAL: He is asking if</p> <p>15 there is two tip sheets per sheet.</p> <p>16 MS. SCHULMAN: Is there one tip</p> <p>17 sheet per shift? If there is a lunch</p> <p>18 and dinner shift on the same day, are</p> <p>19 there two tip sheets per day?</p> <p>20 A. Yes. There are two tip sheets.</p> <p>21 Q. Do these tip sheets accurately</p> <p>22 reflect the amounts of tips each employee</p> <p>23 received on any given shift?</p> <p>24 A. In terms of the credit card</p> <p>25 tips, yes. I don't see here cash tips</p>

<p style="text-align: right;">Page 142</p> <p>1 N. VOLPER</p> <p>2 being reflected.</p> <p>3 Q. Are these the tip sheets that</p> <p>4 you referred to earlier that are used to</p> <p>5 calculate the total tips that each</p> <p>6 employee receives per week?</p> <p>7 A. Yes, except the cash tip. It</p> <p>8 does not reflect in the calculation.</p> <p>9 Q. Okay. The defendants produced</p> <p>10 these documents in this litigation. Who</p> <p>11 from the restaurant collected these</p> <p>12 documents to give to your attorney?</p> <p>13 A. This particular one?</p> <p>14 Q. Yes.</p> <p>15 A. I did.</p> <p>16 Q. You did?</p> <p>17 A. Yes.</p> <p>18 Q. Where were they?</p> <p>19 A. Those are in the restaurant.</p> <p>20 Whatever I find, I passed it to my</p> <p>21 attorney.</p> <p>22 Q. Have you produced all the tip</p> <p>23 sheets that are in your possession?</p> <p>24 A. What I find so far, I produced</p> <p>25 it.</p>	<p style="text-align: right;">Page 144</p> <p>1 N. VOLPER</p> <p>2 MR. SEGAL: D13. To be honest</p> <p>3 with you, might be a typo.</p> <p>4 Q. Does the restaurant have tip</p> <p>5 sheets from before 2021?</p> <p>6 A. Yes. Do I have them personally?</p> <p>7 Q. Does the restaurant have them?</p> <p>8 A. Let me revise my answer. I try</p> <p>9 to locate. Whatever I locate, I gave to</p> <p>10 my attorney. Do I keep the same system in</p> <p>11 place since we opened, yes. Just to make</p> <p>12 sure it is clear.</p> <p>13 Q. Where do the employees put the</p> <p>14 tip sheets after they are prepared?</p> <p>15 A. They put like a book for them.</p> <p>16 We call it book, like employees book.</p> <p>17 They put in one of the shelves, special</p> <p>18 shelf where they put whatever documents,</p> <p>19 tips.</p> <p>20 Q. What happens to these records?</p> <p>21 A. What happens to this record?</p> <p>22 Q. Yes.</p> <p>23 A. Well, I don't know what</p> <p>24 happened. Past records --</p> <p>25 MR. SEGAL: Once it goes in the</p>
<p style="text-align: right;">Page 143</p> <p>1 N. VOLPER</p> <p>2 Q. Where did you find these</p> <p>3 specific ones?</p> <p>4 A. I mentioned. In the office.</p> <p>5 Q. In the office?</p> <p>6 A. Yes.</p> <p>7 Q. Are there other tip sheets in</p> <p>8 the office?</p> <p>9 A. I don't believe so, but can be</p> <p>10 other place in the restaurant because we</p> <p>11 have like documents here, documents there</p> <p>12 (indicating) but very old documents. I</p> <p>13 looked -- so far was not there but</p> <p>14 whatever I find, I produced.</p> <p>15 Q. These tips sheets are from --</p> <p>16 A. 2021.</p> <p>17 Q. These tip sheets are from</p> <p>18 various days in 2021, correct?</p> <p>19 A. Let me look through all of them</p> <p>20 briefly.</p> <p>21 Q. Please.</p> <p>22 A. No. I see 2020 here. 2021,</p> <p>23 2020.</p> <p>24 Q. If you see 2020, please</p> <p>25 identify.</p>	<p style="text-align: right;">Page 145</p> <p>1 N. VOLPER</p> <p>2 folder, where does it go next?</p> <p>3 THE WITNESS: This?</p> <p>4 MR. SEGAL: Yes.</p> <p>5 A. It goes to another form where</p> <p>6 employment -- the credit card tips plus</p> <p>7 hours -- and submitted to CPA. You have</p> <p>8 to calculate hours plus tips, credit card</p> <p>9 tips. I don't see reflect any cash tips</p> <p>10 here. They don't declare.</p> <p>11 Q. Does the restaurant still use</p> <p>12 these type of tip sheets?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And so do you have these tip</p> <p>15 sheets from 2022?</p> <p>16 A. 2022-- yes, I do. Current one</p> <p>17 you mean for last two, three months --</p> <p>18 yeah, yeah. We have.</p> <p>19 (Whereupon, Bates Plaintiff 44</p> <p>20 to 59 was marked as Defendant's</p> <p>21 Exhibit 17 for identification as of</p> <p>22 this date by the Reporter.)</p> <p>23 Q. Exhibit 17 are documents that</p> <p>24 are in plaintiff's possession. Bates</p> <p>25 range from Plaintiff 44 through Plaintiff</p>

<p style="text-align: right;">Page 146</p> <p>1 N. VOLPER</p> <p>2 59. Please take a look. Do you know what</p> <p>3 they are, Mr. Volper?</p> <p>4 A. Yes. This looks like by date by</p> <p>5 employee, like how much they make on</p> <p>6 credit card tips on this particular day.</p> <p>7 Q. Are these weekly tip sheets that</p> <p>8 the restaurant keeps?</p> <p>9 A. Yes.</p> <p>10 Q. Who creates these documents?</p> <p>11 A. We create for long time. I</p> <p>12 don't know. Maybe some of the employees</p> <p>13 or me.</p> <p>14 Q. Does the restaurant keep these</p> <p>15 records?</p> <p>16 A. We have some records, yes.</p> <p>17 Q. They are in paper form?</p> <p>18 A. Yes, yes. They are in paper</p> <p>19 form. Same form like this but, you know,</p> <p>20 original, not copies.</p> <p>21 Q. When did the restaurant begin --</p> <p>22 A. This is 2017, correct?</p> <p>23 Q. Yes.</p> <p>24 When did the restaurant begin</p> <p>25 using weekly tip sheets like this?</p>	<p style="text-align: right;">Page 148</p> <p>1 N. VOLPER</p> <p>2 only bank account, correct?</p> <p>3 A. Yes.</p> <p>4 Q. That you produced statements</p> <p>5 for?</p> <p>6 A. Yes.</p> <p>7 Q. And the statements that you</p> <p>8 produced were from July 2016 to the end of</p> <p>9 2021, correct?</p> <p>10 A. I want to take a look. Which</p> <p>11 statement?</p> <p>12 Q. The ones that you produced in</p> <p>13 this litigation.</p> <p>14 A. Yes.</p> <p>15 Q. How did you go about collecting</p> <p>16 the bank statements for the production in</p> <p>17 in this litigation?</p> <p>18 A. Bank online.</p> <p>19 Q. What did you do online to get</p> <p>20 the statements?</p> <p>21 A. It is available for certain</p> <p>22 period of time.</p> <p>23 Q. You downloaded from your account</p> <p>24 online?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 147</p> <p>1 N. VOLPER</p> <p>2 A. Probably most likely since the</p> <p>3 beginning.</p> <p>4 Q. Is the restaurant in possession</p> <p>5 of those weekly tip sheets?</p> <p>6 A. Current one, I am not too sure.</p> <p>7 The past one, maybe destroyed. Whatever I</p> <p>8 have, I provide. This is 2017, 2019. I'm</p> <p>9 not sure if I have all the years.</p> <p>10 Q. Where does the restaurant keep</p> <p>11 weekly tip sheets currently?</p> <p>12 A. In our office.</p> <p>13 Q. In your office?</p> <p>14 A. Yes.</p> <p>15 MR. DiGIULIO: Let's take five</p> <p>16 minutes.</p> <p>17 (Whereupon, a short recess was</p> <p>18 taken.)</p> <p>19 MR. DiGIULIO: Back on the</p> <p>20 record.</p> <p>21 Q. Mr. Volper, you produced 212</p> <p>22 Steakhouse Incorporated Bank of America's</p> <p>23 bank statement, correct?</p> <p>24 A. Correct.</p> <p>25 Q. And that is 212 Steakhouse's</p>	<p style="text-align: right;">Page 149</p> <p>1 N. VOLPER</p> <p>2 Q. And you gave it to your</p> <p>3 attorney?</p> <p>4 A. Yes.</p> <p>5 Q. When did you go about collecting</p> <p>6 that information?</p> <p>7 A. When?</p> <p>8 Q. Yes.</p> <p>9 A. I think it was like two, three</p> <p>10 months ago I sent information to my</p> <p>11 accountant.</p> <p>12 Q. How long did it take you to pull</p> <p>13 out the bank statements?</p> <p>14 A. I print and then I have to</p> <p>15 download and send to him -- maybe like two</p> <p>16 or three hours.</p> <p>17 Q. Do you have access to the bank</p> <p>18 statements from this year, from 2022?</p> <p>19 A. Yes.</p> <p>20 (Whereupon, bank statements were</p> <p>21 marked as Defendant's Exhibit 18 for</p> <p>22 identification as of this date by the</p> <p>23 Reporter.)</p> <p>24 Q. This is marked No. 18. Few</p> <p>25 examples of some of the bank statements</p>

<p style="text-align: right;">Page 150</p> <p>1 N. VOLPER</p> <p>2 you produced in this litigation. These</p> <p>3 documents were produced without Bates</p> <p>4 stamps so we have Bates numbered them.</p> <p>5 This is three months worth of statements</p> <p>6 here. November 2020, July 2021, December</p> <p>7 2021. Bates D525 through 544, D709</p> <p>8 through 734, and D847 through D870. First</p> <p>9 batch of pages Bates D525 through 544.</p> <p>10 Are these the Bank of America bank</p> <p>11 statements for the restaurant for</p> <p>12 November 2020?</p> <p>13 A. This is November 1st to 30th,</p> <p>14 yes, 2020.</p> <p>15 Q. If you look on page D5 through 7</p> <p>16 which is the 13th page in through D54,</p> <p>17 these are images of checks that restaurant</p> <p>18 issued, correct?</p> <p>19 A. Correct.</p> <p>20 Q. So you have produced bank</p> <p>21 statements from earlier, as early as</p> <p>22 July 2016 that don't have images of the</p> <p>23 checks?</p> <p>24 A. Huh-huh.</p> <p>25 Q. Are you able to access images of</p>	<p style="text-align: right;">Page 152</p> <p>1 N. VOLPER</p> <p>2 A. Actually, they sent but there is</p> <p>3 no images. I know you guys asked for that</p> <p>4 but I was not able to in the past</p> <p>5 statements to generate that report.</p> <p>6 Q. Before Bank of America had or</p> <p>7 saved the images of the check, did 212</p> <p>8 Steakhouse write down who the checks were</p> <p>9 written to based on the check number?</p> <p>10 A. Yes. We have, but we keep like</p> <p>11 -- because the employees did it most of</p> <p>12 the time, they just put the check and then</p> <p>13 another side they don't put who it is to.</p> <p>14 So when you have to check -- this is the</p> <p>15 most accurate information.</p> <p>16 Q. I understand at the time there</p> <p>17 are images. Before there were images, is</p> <p>18 there any record for which check went to</p> <p>19 which person?</p> <p>20 A. No. I was not able to figure</p> <p>21 out or I was not able to find that</p> <p>22 information. There is two parts. When</p> <p>23 the check is gone, you know, the original</p> <p>24 check, the second part they don't fill it</p> <p>25 up. So I don't know -- this particular</p>
<p style="text-align: right;">Page 151</p> <p>1 N. VOLPER</p> <p>2 the checks prior to November 2020?</p> <p>3 A. No. I tried. I requested.</p> <p>4 Q. How did you request images of</p> <p>5 the checks?</p> <p>6 A. By phone.</p> <p>7 Q. What did they tell you?</p> <p>8 A. They said they are going to send</p> <p>9 it but there is no images. When I go</p> <p>10 online, I see there is images for only</p> <p>11 certain period of time. After that the</p> <p>12 images don't appear.</p> <p>13 Q. The person you spoke to said</p> <p>14 they would send you images?</p> <p>15 A. Which person?</p> <p>16 Q. Did you call Bank of America?</p> <p>17 A. I called Bank of America. I say</p> <p>18 certain statements, there is no images.</p> <p>19 They said this is different service or</p> <p>20 something, but I request and they never</p> <p>21 sent.</p> <p>22 Q. Did they tell you they were</p> <p>23 going to send you images?</p> <p>24 A. Yes, but they never did.</p> <p>25 Q. And so --</p>	<p style="text-align: right;">Page 153</p> <p>1 N. VOLPER</p> <p>2 check let's say Check 3053, who it belongs</p> <p>3 to, if it is vendors, electrical,</p> <p>4 insurance.</p> <p>5 Q. How was the restaurant able to</p> <p>6 issue 1099s for employees, for staff?</p> <p>7 A. How it was issued?</p> <p>8 Q. Yes.</p> <p>9 A. Based on the past. As I</p> <p>10 mentioned before, you can access certain</p> <p>11 period of time but you cannot go -- I</p> <p>12 think it is like one year or eighteen</p> <p>13 months. At that time it was available but</p> <p>14 when you put three months back, they are</p> <p>15 not there anymore.</p> <p>16 Q. So at the time the restaurant</p> <p>17 issued 1099s for the front and</p> <p>18 back-of-house employees --</p> <p>19 A. We have that information</p> <p>20 available in the system.</p> <p>21 Q. On your system or the Bank of</p> <p>22 America?</p> <p>23 A. Bank of America system.</p> <p>24 Q. Does the restaurant use</p> <p>25 QuickBooks?</p>

<p style="text-align: right;">Page 154</p> <p>1 N. VOLPER</p> <p>2 A. No.</p> <p>3 Q. Are some of the checks issued</p> <p>4 here, are they checks for employees'</p> <p>5 paychecks?</p> <p>6 A. Some of the them they are for</p> <p>7 different, different vendors --</p> <p>8 electrical, can be many things.</p> <p>9 Q. All of these checks were checks</p> <p>10 that were cashed that month; is that</p> <p>11 correct?</p> <p>12 A. Yes. If they show here, I</p> <p>13 guess. Is the back image say anything</p> <p>14 about the cash? I guess they are cashed</p> <p>15 because they appear in the system. They</p> <p>16 are being cashed.</p> <p>17 Q. Earlier in this case the</p> <p>18 restaurant had to provide plaintiff with</p> <p>19 list for front-of-house employees that</p> <p>20 were employed on or after January 20, 2019</p> <p>21 so the plaintiffs can send a notice of the</p> <p>22 lawsuit. Do you recall this?</p> <p>23 A. Yes.</p> <p>24 Q. Who prepared that list?</p> <p>25 A. I prepared the list. Generate</p>	<p style="text-align: right;">Page 156</p> <p>1 N. VOLPER</p> <p>2 identification as of this date by the</p> <p>3 Reporter.)</p> <p>4 Q. This is Exhibit 19. This is the</p> <p>5 list of front-of-house employees that your</p> <p>6 attorney provided the plaintiff. He gave</p> <p>7 this to us on May 5, 2022. Is this the</p> <p>8 list you were just discussing that you</p> <p>9 used the POS to determine?</p> <p>10 A. Yes.</p> <p>11 Q. How did you determine the start</p> <p>12 dates on this list?</p> <p>13 A. So, how I determine the start</p> <p>14 date?</p> <p>15 Q. Yes.</p> <p>16 A. I start by like the requested</p> <p>17 dates to pull the list. Requested back</p> <p>18 dates to the current.</p> <p>19 Q. In the POS system does it say</p> <p>20 the start dates of these employees?</p> <p>21 A. I think you have to go -- yes, I</p> <p>22 think so. When you go to the pay period</p> <p>23 it is going to see when getting the first</p> <p>24 -- the log in.</p> <p>25 Q. How did you determine the end</p>
<p style="text-align: right;">Page 155</p> <p>1 N. VOLPER</p> <p>2 from the POS system. It was very</p> <p>3 difficult to prepare that list. I think</p> <p>4 you asked for like the since the very</p> <p>5 beginning.</p> <p>6 Q. I am only asking about the list</p> <p>7 that we received May 5, 2022 which is</p> <p>8 called the 216B list. It is only the</p> <p>9 front-of-house employees from</p> <p>10 January 2019, so three years ago. Do you</p> <p>11 recall preparing that specific list?</p> <p>12 A. Yes.</p> <p>13 Q. How did you prepare it?</p> <p>14 A. I have to go to the POS system</p> <p>15 to generate that records.</p> <p>16 Q. You were in the POS system to</p> <p>17 figure out who worked in the restaurant</p> <p>18 over the last three years?</p> <p>19 A. Yes.</p> <p>20 Q. Did you rely on any other</p> <p>21 information?</p> <p>22 A. Not really because everybody is</p> <p>23 supposed to be in there.</p> <p>24 (Whereupon, 216B list was marked</p> <p>25 as Defendant's Exhibit 19 for</p>	<p style="text-align: right;">Page 157</p> <p>1 N. VOLPER</p> <p>2 dates?</p> <p>3 A. Same way. When the log-in</p> <p>4 stops, that means they are not there</p> <p>5 anymore with the company.</p> <p>6 Q. After you generate this list</p> <p>7 from the POS system, did you check any</p> <p>8 other documents to make sure this is</p> <p>9 accurate?</p> <p>10 A. No, I don't.</p> <p>11 Q. This was given to us on May 5,</p> <p>12 2022. You will see the first, I am going</p> <p>13 to go through and ask if these people are</p> <p>14 currently working at the restaurant?</p> <p>15 A. Okay.</p> <p>16 Q. Is Alexander Rynkovsky still</p> <p>17 working there?</p> <p>18 A. Yes.</p> <p>19 Q. Is Everado Perez still working</p> <p>20 there?</p> <p>21 A. Yes.</p> <p>22 Q. Samuel Garcia?</p> <p>23 A. Yes.</p> <p>24 Q. Javier Clemente?</p> <p>25 A. Yes.</p>

40 (Pages 154 - 157)

<p style="text-align: right;">Page 158</p> <p>1 N. VOLPER</p> <p>2 Q. Is Dierdre Cora Bethea still</p> <p>3 working there?</p> <p>4 A. I don't think so, no.</p> <p>5 MR. SEGAL: That was mentioned</p> <p>6 earlier that you said you didn't</p> <p>7 recognize.</p> <p>8 A. Oh. I know why.</p> <p>9 Q. She is a bartender looks like?</p> <p>10 A. No, no. I was away for like</p> <p>11 four, five months January until May --</p> <p>12 Q. Does she still work there?</p> <p>13 A. I don't think I ever meet her.</p> <p>14 She stopped January. Looks like she</p> <p>15 stopped January 2022. I was not there,</p> <p>16 yeah. That's why I cannot recall. I was</p> <p>17 not there, yes.</p> <p>18 Q. Bonafacio Ramos?</p> <p>19 A. I don't believe so, no.</p> <p>20 Q. You don't believe they are</p> <p>21 working there?</p> <p>22 A. I cannot recall. I can't.</p> <p>23 Q. Oscar Bravo Morales?</p> <p>24 A. I think so he is still with us,</p> <p>25 yes.</p>	<p style="text-align: right;">Page 160</p> <p>1 N. VOLPER</p> <p>2 Q. Is Sammy represented on this</p> <p>3 list?</p> <p>4 A. I don't know. I stopped to go</p> <p>5 after my birthday -- in fact -- yeah.</p> <p>6 Q. This list is supposed to cover</p> <p>7 all the front-of-house employees in the</p> <p>8 past three years?</p> <p>9 A. As you can see, they called them</p> <p>10 different names.</p> <p>11 Q. I understand. Do you know who</p> <p>12 Sammy is?</p> <p>13 A. Sammy, I think is the food</p> <p>14 runner.</p> <p>15 Q. To your knowledge is Sammy --</p> <p>16 A. Yes. Samuel Garcia is the</p> <p>17 runner, yes.</p> <p>18 Q. Do you know who Davey (ph) is?</p> <p>19 A. Probably Javier Clemente. I</p> <p>20 don't know.</p> <p>21 Q. You don't know who Davey is?</p> <p>22 A. This is not the correct name.</p> <p>23 Q. I understand that. I don't want</p> <p>24 you to guess who is on the list. You</p> <p>25 don't know who Davey is?</p>
<p style="text-align: right;">Page 159</p> <p>1 N. VOLPER</p> <p>2 Q. Luis Fernandez?</p> <p>3 A. I think he is still with us.</p> <p>4 Q. If we look back at the tip</p> <p>5 sheets Exhibit 16, on the first page D1255</p> <p>6 this is a tip sheet from May 28th of 2021.</p> <p>7 A. Correct.</p> <p>8 Q. The first name is Sasha. Sasha</p> <p>9 worked on May 2021, correct?</p> <p>10 A. They create all this short names</p> <p>11 and you put all the information -- so, I</p> <p>12 think he called himself Sasha.</p> <p>13 Q. Paco?</p> <p>14 A. Paco is Everado Perez. That's</p> <p>15 the way he calls himself.</p> <p>16 Q. Sammy is a runner?</p> <p>17 A. Who is Sammy -- oh, oka. Yeah,</p> <p>18 Sammy is a runner.</p> <p>19 MR. SEGAL: Is that Samuel</p> <p>20 Garcia?</p> <p>21 MS. SCHULMAN: Don't lead him</p> <p>22 with the answer.</p> <p>23 THE WITNESS: No, no. He is not</p> <p>24 helping. I am just bad with the</p> <p>25 names.</p>	<p style="text-align: right;">Page 161</p> <p>1 N. VOLPER</p> <p>2 A. No, I don't know who Davey is.</p> <p>3 I don't know their nicknames.</p> <p>4 Q. Can you turn to D1257?</p> <p>5 A. Same document?</p> <p>6 Q. Yes. Next page.</p> <p>7 MR. SEGAL: Next page.</p> <p>8 Q. 1257. May 30, 2021.</p> <p>9 A. Yes, sir.</p> <p>10 Q. We have busser Javier. Do you</p> <p>11 know who Javier is?</p> <p>12 A. Yes. Looks like this is the</p> <p>13 same person. They call themselves</p> <p>14 differently here. I think that's Javier.</p> <p>15 This is something. What's his name --</p> <p>16 yes, Javier Clemente. But they call</p> <p>17 themselves different names here.</p> <p>18 Q. If you go to D1261, few more</p> <p>19 pages down. It is June 3, 2021.</p> <p>20 A. Yes, sir.</p> <p>21 Q. We have Ilya (ph). Do you know</p> <p>22 who that is?</p> <p>23 A. No idea. This is like sometimes</p> <p>24 we get people to help us. This maybe from</p> <p>25 outside vendors, even any member from</p>

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<p style="text-align: right;">Page 162</p> <p>1 N. VOLPER</p> <p>2 waitress, bartender, cook, we call when we</p> <p>3 have problems with the staff we call</p> <p>4 special service and we get people.</p> <p>5 Q. Do you sometimes get runners in</p> <p>6 that regard?</p> <p>7 A. Also. You see I was not there.</p> <p>8 I stopped going after pretty much end of</p> <p>9 the month.</p> <p>10 Q. Is Ilya reflected on the 216B</p> <p>11 list to your knowledge? Do you know?</p> <p>12 A. I don't know how they call</p> <p>13 themselves. That's the problem.</p> <p>14 Q. You don't know?</p> <p>15 A. No.</p> <p>16 Q. Next is JC on the same page. Do</p> <p>17 you know who JC is?</p> <p>18 A. Where is it?</p> <p>19 Q. Right here (indicating).</p> <p>20 A. I don't know that. Maybe</p> <p>21 Clemente.</p> <p>22 Q. Further down is busser, Danny or</p> <p>23 what appears to be Danny. Do you know?</p> <p>24 A. Not that I know.</p> <p>25 Q. You don't know?</p>	<p style="text-align: right;">Page 164</p> <p>1 N. VOLPER</p> <p>2 Q. Do you know if G. Carlos is on</p> <p>3 the 216B list?</p> <p>4 A. Because we have like a lot of --</p> <p>5 my staff they have a lot of friends. They</p> <p>6 just call them hey, can you help us here</p> <p>7 for one day. So they are not like really</p> <p>8 consider like employee.</p> <p>9 Q. My question is only if that</p> <p>10 person is on the list?</p> <p>11 A. I cannot. I don't know.</p> <p>12 Q. Okay. You don't know. That's</p> <p>13 fine.</p> <p>14 A. I don't know. I don't know.</p> <p>15 Q. Let's keep going. D1311 is</p> <p>16 June 16, 2021. Bottom right.</p> <p>17 A. Okay.</p> <p>18 Q. Do you know who BGC is?</p> <p>19 A. No, I don't know.</p> <p>20 Q. Do you know if they are on that</p> <p>21 list?</p> <p>22 A. No.</p> <p>23 Q. D1332 is April 3, 2021. We have</p> <p>24 Velente. Do you know who Velente is? Is</p> <p>25 he a runner?</p>
<p style="text-align: right;">Page 163</p> <p>1 N. VOLPER</p> <p>2 A. Not that I know. I can't read</p> <p>3 that name.</p> <p>4 Q. JC you said was Javier. But</p> <p>5 Javier is down here and he is a busser,</p> <p>6 right?</p> <p>7 A. This is really difficult for me</p> <p>8 to understand because they put their</p> <p>9 nicknames.</p> <p>10 Q. I understand.</p> <p>11 A. I don't know.</p> <p>12 Q. Do you know what these names</p> <p>13 refer to specifically?</p> <p>14 A. I'm not sure if I know because I</p> <p>15 cannot recognize.</p> <p>16 Q. That's fine. If you don't know</p> <p>17 that's fine but you need to say you don't</p> <p>18 know as opposed to guessing.</p> <p>19 A. I don't know. I don't know. I</p> <p>20 may not -- I may not know.</p> <p>21 Q. D1268. This is June 10, 2021.</p> <p>22 Below the busser is G. Carlos. Do you</p> <p>23 know who G. Carlos is from?</p> <p>24 A. That maybe something like</p> <p>25 temporary, maybe one or two days.</p>	<p style="text-align: right;">Page 165</p> <p>1 N. VOLPER</p> <p>2 A. I think it was like one or two</p> <p>3 days come like overtime.</p> <p>4 Q. Is that person listed on the</p> <p>5 216B list?</p> <p>6 A. As employee -- no, he is not</p> <p>7 listed as employee because he was not</p> <p>8 really employee.</p> <p>9 Q. But he worked in the restaurant</p> <p>10 at least on April 3, 2021?</p> <p>11 A. Yes, looks like. If it is in</p> <p>12 there, that means he worked.</p> <p>13 Q. D1355 is from April 30, 2021.</p> <p>14 Do you know Toko's full name; T-O-K-O?</p> <p>15 A. Paco, Paco</p> <p>16 Q. T-O-K-O is Paco?</p> <p>17 A. That maybe the same. P-O-K-O.</p> <p>18 I am pretty sure about that.</p> <p>19 Q. Last one May 7, 2021 which is</p> <p>20 D1362. Do you know who GF is?</p> <p>21 A. That maybe something -- GF, that</p> <p>22 maybe --</p> <p>23 Q. Do you know who GF is?</p> <p>24 A. No. Maybe some temporary</p> <p>25 employee like we call to help.</p>

<p style="text-align: right;">Page 166</p> <p>1 N. VOLPER</p> <p>2 Q. There are at least some people</p> <p>3 who worked front of house who worked in</p> <p>4 2021 who aren't on that list, correct?</p> <p>5 A. Let me make clear to your</p> <p>6 statement. As employee, they are not</p> <p>7 because they need to be on certain amount</p> <p>8 of time. So -- we call other help. Let's</p> <p>9 say we are short of staff because we have</p> <p>10 a completely disaster finding employees</p> <p>11 during the certain days so we call some</p> <p>12 people to help us.</p> <p>13 Q. Did the restaurant pay these</p> <p>14 people directly?</p> <p>15 A. We pay them, yes.</p> <p>16 Q. Did you pay in the same way that</p> <p>17 you paid the regular employees?</p> <p>18 A. To be on a payroll?</p> <p>19 Q. Yes.</p> <p>20 A. Yeah, yeah.</p> <p>21 Q. You paid the temporary workers</p> <p>22 the minimum wage rate plus tips as you</p> <p>23 paid the normal front-of-house workers?</p> <p>24 A. Correct.</p> <p>25 Q. Did the temporary co-workers</p>	<p style="text-align: right;">Page 168</p> <p>1 N. VOLPER</p> <p>2 A. I think it is additional to this</p> <p>3 list as far as I see it. It is</p> <p>4 combination of this and this I guess.</p> <p>5 Q. Your attorney produced this</p> <p>6 document to plaintiff's attorney on</p> <p>7 August 19, 2020. Did you participate in</p> <p>8 in creating this list?</p> <p>9 A. Yes.</p> <p>10 Q. How did you participate in</p> <p>11 creating the list?</p> <p>12 A. By pulling from the POS system.</p> <p>13 Q. Did anyone else help you create</p> <p>14 the list?</p> <p>15 A. I don't remember somebody</p> <p>16 helping me.</p> <p>17 Q. Besides POS, did you rely on any</p> <p>18 other documents to create this list?</p> <p>19 A. No.</p> <p>20 Q. When you gave this list to your</p> <p>21 attorney, did it include the employees's</p> <p>22 names?</p> <p>23 A. Yes.</p> <p>24 Q. Top half of the list, from the</p> <p>25 top to where it says 2021 October, 2022</p>
<p style="text-align: right;">Page 167</p> <p>1 N. VOLPER</p> <p>2 clock in and out?</p> <p>3 A. I believe so. I hope so. I</p> <p>4 don't know. Maybe not. They maybe not</p> <p>5 clock in and clock out because they not</p> <p>6 appear on the system I guess. They just</p> <p>7 give us like -- I work from 1:00 until</p> <p>8 5:00. That was it.</p> <p>9 Q. Are you aware that after you</p> <p>10 produced this list, 216B list, the judge</p> <p>11 ordered the restaurant to provide a list</p> <p>12 of all the restaurant's front-of-house and</p> <p>13 back-of-house employees from January 2016</p> <p>14 to the present. Are you aware of that?</p> <p>15 A. Yes.</p> <p>16 (Whereupon, redacted list was</p> <p>17 marked as Defendant's Exhibit 20 for</p> <p>18 identification as of this date by the</p> <p>19 Reporter.)</p> <p>20 Q. This is marked Exhibit 20. Is</p> <p>21 this the list of all front and</p> <p>22 back-of-house employees from January 20,</p> <p>23 2016 to the present with the names</p> <p>24 redacted that you produced to your</p> <p>25 attorney?</p>	<p style="text-align: right;">Page 169</p> <p>1 N. VOLPER</p> <p>2 February server, this is the same list as</p> <p>3 the 216B list, correct?</p> <p>4 A. This list?</p> <p>5 Q. Yes.</p> <p>6 MS. SCHULMAN: We are comparing</p> <p>7 Exhibit 19 to Exhibit 20.</p> <p>8 A. I assume it is the same but the</p> <p>9 name has been taken here, correct?</p> <p>10 Q. Correct.</p> <p>11 A. My question is do the top 24</p> <p>12 entries reflect the same individuals from</p> <p>13 the 216B list as in the class list?</p> <p>14 A. I hope so.</p> <p>15 Q. All of these individuals on the</p> <p>16 top on the class list were front-of-house</p> <p>17 employees, correct?</p> <p>18 A. Which individuals?</p> <p>19 Q. Top 24 that are all in bold.</p> <p>20 Server, runner, busser, bartender. Do you</p> <p>21 see that?</p> <p>22 A. Yes.</p> <p>23 Q. The only people that are on this</p> <p>24 list Exhibit 20 who are not on Exhibit 18</p> <p>25 are the back-of-house employees listed in</p>

<p style="text-align: right;">Page 170</p> <p>1 N. VOLPER</p> <p>2 the bottom eight rows, correct?</p> <p>3 A. Can you repeat the question?</p> <p>4 I'm sorry.</p> <p>5 Q. Sure. The only people that are</p> <p>6 on this list in Exhibit 20 which is the</p> <p>7 class list who are not on Exhibit 19 which</p> <p>8 is the 216B list are the last eight lines,</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. Isn't it true that the</p> <p>12 restaurant had some front-of-house</p> <p>13 employees who worked between January 20,</p> <p>14 2016 and January 9, 2019 but were not</p> <p>15 employed by the restaurant after</p> <p>16 January 20, 2019?</p> <p>17 A. Is it -- can you repeat again?</p> <p>18 I'm sorry.</p> <p>19 Q. Sure. Isn't it true that the</p> <p>20 restaurant had some front-of-house</p> <p>21 employees who worked between January 2016</p> <p>22 and January 2019 but did not work after</p> <p>23 January of 2019?</p> <p>24 A. I'm sorry. You need to repeat</p> <p>25 again. I am getting tired.</p>	<p style="text-align: right;">Page 172</p> <p>1 N. VOLPER</p> <p>2 A. Kelsey was there for a very</p> <p>3 short period of time. I don't know. The</p> <p>4 system doesn't generate that record looks</p> <p>5 like. Yeah, looks like the system did</p> <p>6 something wrong.</p> <p>7 MS. SCHULMAN: Just try and</p> <p>8 answer the question.</p> <p>9 Q. Is Kelsey on that list?</p> <p>10 A. No.</p> <p>11 Q. Miguel further down as a runner</p> <p>12 that worked in March of 2017. Is Miguel</p> <p>13 on that list?</p> <p>14 A. I cannot determine but looks</p> <p>15 like not.</p> <p>16 Q. Did the restaurant employ Miguel</p> <p>17 in 2019?</p> <p>18 A. Probably he can be like</p> <p>19 temporary something or can be employee.</p> <p>20 Q. What about Noel below Miguel?</p> <p>21 Did the restaurant employee Noel in 2017?</p> <p>22 A. I know Noel. He start like very</p> <p>23 first in the beginning. Maybe when I put</p> <p>24 the -- generate the report because he was</p> <p>25 like sixteen or something, maybe the</p>
<p style="text-align: right;">Page 171</p> <p>1 N. VOLPER</p> <p>2 MR. DiGIULIO: Do you want a</p> <p>3 break?</p> <p>4 THE WITNESS: I am getting</p> <p>5 tired.</p> <p>6 MR. SEGAL: I can rephrase it</p> <p>7 differently.</p> <p>8 Q. Did the restaurant employee</p> <p>9 front-of-house employees that worked</p> <p>10 before 2019 but that didn't work after</p> <p>11 2019?</p> <p>12 A. I don't understand.</p> <p>13 Q. Let's look at Exhibit 17 which</p> <p>14 is Plaintiff 0044. For instance, this is</p> <p>15 a tip sheet from a week in March of 2017,</p> <p>16 correct?</p> <p>17 A. Correct.</p> <p>18 Q. If you look at Exhibit 19, there</p> <p>19 is someone on this tip sheet named Kelsey,</p> <p>20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. As a server, right?</p> <p>23 A. Yes.</p> <p>24 Q. Kelsey is not on 216B list,</p> <p>25 correct?</p>	<p style="text-align: right;">Page 173</p> <p>1 N. VOLPER</p> <p>2 system doesn't reflect on sixteen and</p> <p>3 seventeen.</p> <p>4 Q. Is Noel on this list which is</p> <p>5 Exhibit 19?</p> <p>6 A. I don't see here.</p> <p>7 Q. Below that on Exhibit 17 you</p> <p>8 have Tristan. Do you see that?</p> <p>9 A. Tristan was not working -- 17?</p> <p>10 Which one?</p> <p>11 Q. Did the restaurant employ</p> <p>12 Tristan in March of 2017?</p> <p>13 A. I have no idea.</p> <p>14 Q. He is on this tip sheet,</p> <p>15 correct?</p> <p>16 A. Looks like Tristan is not here,</p> <p>17 yes.</p> <p>18 Q. And is he not on the 216B list,</p> <p>19 right?</p> <p>20 A. No.</p> <p>21 Q. Luis, busser on plaintiff's 44</p> <p>22 Exhibit 17?</p> <p>23 A. I have no idea.</p> <p>24 Q. You see Luis here on Exhibit 19</p> <p>25 started in February 2022, correct? Is it</p>

<p style="text-align: right;">Page 174</p> <p>1 N. VOLPER</p> <p>2 the same --</p> <p>3 A. I have no idea if it is the same</p> <p>4 or not.</p> <p>5 Q. Isn't it true that Stefana</p> <p>6 Manzana was a server at the restaurant?</p> <p>7 A. Stefana Manzana -- something</p> <p>8 ring a bell. Yeah, maybe she was like a</p> <p>9 week or two or something like that.</p> <p>10 Q. Do you recall what year she</p> <p>11 worked?</p> <p>12 A. No. I think it was -- I think</p> <p>13 it was before the pandemic I believe so.</p> <p>14 Q. Isn't it true that Luis Quizphi,</p> <p>15 Q-U-I-Z-P-H-I, was a busser?</p> <p>16 A. Yes.</p> <p>17 Q. And he worked at the restaurant</p> <p>18 from --</p> <p>19 A. He worked like very early.</p> <p>20 Yeah, it is true.</p> <p>21 Q. Is he included in Exhibit 20?</p> <p>22 A. No, because -- he was involved</p> <p>23 in another lawsuit.</p> <p>24 MR. SEGAL: I don't know why it</p> <p>25 was put --</p>	<p style="text-align: right;">Page 176</p> <p>1 N. VOLPER</p> <p>2 server at the restaurant?</p> <p>3 A. Alina?</p> <p>4 Q. Yes.</p> <p>5 A. I don't remember the name Alina</p> <p>6 to be a server.</p> <p>7 MR. SEGAL: Is that on the list?</p> <p>8 MR. DiGIULIO: No, I am just</p> <p>9 asking.</p> <p>10 A. No, I don't remember.</p> <p>11 Q. You don't remember if she worked</p> <p>12 at the same time that Nino Martinenko</p> <p>13 worked?</p> <p>14 A. I don't remember. I don't</p> <p>15 remember Alina as a server.</p> <p>16 MS. SCHULMAN: Do you remember</p> <p>17 Alina in a different position?</p> <p>18 A. If I am not mistaken we have a</p> <p>19 host for short period of time also.</p> <p>20 Q. Is there a host position at the</p> <p>21 restaurant?</p> <p>22 A. Sometimes when we need it, when</p> <p>23 we have like busy. Sometimes I host.</p> <p>24 Some friend of mine, we host.</p> <p>25 Q. Is the host paid the same hourly</p>
<p style="text-align: right;">Page 175</p> <p>1 N. VOLPER</p> <p>2 THE WITNESS: Yes, that's why.</p> <p>3 Q. Isn't it true that Noel was a</p> <p>4 runner at the restaurant?</p> <p>5 A. Noel was a runner, yes. I</p> <p>6 remember Noel very well.</p> <p>7 Q. Are they included in the</p> <p>8 Exhibit 20?</p> <p>9 A. His real name is not -- I have</p> <p>10 to look at Exhibit 19. I think you asked</p> <p>11 me that question already.</p> <p>12 Q. Is Noel included in Exhibit 19?</p> <p>13 A. No.</p> <p>14 Q. Isn't it true that Lucia Bonzia</p> <p>15 (ph) --</p> <p>16 A. She was also very briefly there.</p> <p>17 Q. She worked as a bartender?</p> <p>18 A. She worked as a bartender and</p> <p>19 moved to different city. She was like</p> <p>20 week or two or something like that. Some</p> <p>21 of the people were week or two. Some two</p> <p>22 days, some one day. They don't like the</p> <p>23 place so -- they was in the system, I</p> <p>24 guess.</p> <p>25 Q. Isn't it true that Alina was a</p>	<p style="text-align: right;">Page 177</p> <p>1 N. VOLPER</p> <p>2 wage as front of house?</p> <p>3 A. We don't have a daily host.</p> <p>4 Q. When the restaurant does have a</p> <p>5 host, are they paid the same as</p> <p>6 front-of-house employee?</p> <p>7 A. They are not officially. They</p> <p>8 are like event hosts. They are not</p> <p>9 official employees. They are like event</p> <p>10 hosts. We have like a lot of people like</p> <p>11 bartenders, kitchen, different -- big</p> <p>12 problem finding employees so they are</p> <p>13 basically not our employees. They are</p> <p>14 through agency.</p> <p>15 Q. I believe you mentioned someone</p> <p>16 name Luciano was a server at the</p> <p>17 restaurant?</p> <p>18 A. Luciano?</p> <p>19 Q. Yes.</p> <p>20 A. What is the last name?</p> <p>21 Q. I don't know. Is it true that</p> <p>22 the restaurant employed a server named</p> <p>23 L-U-C-I-A-N-O?</p> <p>24 A. We have a Luciano but his name</p> <p>25 is -- this one (indicating).</p>

<p style="text-align: right;">Page 178</p> <p>1 N. VOLPER</p> <p>2 Q. This is Exhibit 19?</p> <p>3 A. Yes.</p> <p>4 Q. Which one?</p> <p>5 A. Lychezar Lazarov.</p> <p>6 Q. Did the restaurant hire a server</p> <p>7 named Dave in 2016?</p> <p>8 A. I don't recall.</p> <p>9 MR. SEGAL: These names are</p> <p>10 coming up from plaintiff?</p> <p>11 THE WITNESS: Definitely.</p> <p>12 MR. SEGAL: I need two minutes.</p> <p>13 MR. DiGIULIO: Sure.</p> <p>14 (Whereupon, a short recess was</p> <p>15 taken.)</p> <p>16 MR. DiGIULIO: Back on the</p> <p>17 record.</p> <p>18 Q. Can you look at Exhibit 5?</p> <p>19 A. Yes, sir.</p> <p>20 Q. On the second page which is</p> <p>21 Plaintiff's 26, bottom section where it</p> <p>22 says kitchen there are six names, correct?</p> <p>23 A. Correct.</p> <p>24 Q. All six individuals worked in</p> <p>25 the kitchen in July of 2021, correct?</p>	<p style="text-align: right;">Page 180</p> <p>1 N. VOLPER</p> <p>2 help us. We called him a few times to</p> <p>3 help us because it was short of staff.</p> <p>4 Q. If you go back to Exhibit 20</p> <p>5 which is the class list?</p> <p>6 A. Okay.</p> <p>7 Q. If you look at the bottom of the</p> <p>8 list there are only two individuals listed</p> <p>9 who worked in 2021, correct, if you look</p> <p>10 at the third and fourth from the bottom?</p> <p>11 A dishwasher and a cook are listed.</p> <p>12 A. There are no names.</p> <p>13 Q. They are redacted, right?</p> <p>14 A. Yeah, but there are names</p> <p>15 Exhibit 19. I cannot figure out.</p> <p>16 MS. SCHULMAN: Wait for him to</p> <p>17 get through the question.</p> <p>18 Q. These bottom eight individuals</p> <p>19 have no names. I don't know the names.</p> <p>20 All we have is the date when they started</p> <p>21 when they ended, and their position down</p> <p>22 at the bottom. This is the back-of-house</p> <p>23 people.</p> <p>24 A. Okay.</p> <p>25 Q. My question to you is on the</p>
<p style="text-align: right;">Page 179</p> <p>1 N. VOLPER</p> <p>2 A. For this particular days, yes.</p> <p>3 They worked July 19th to 25th, but the</p> <p>4 other time, they weren't.</p> <p>5 Q. But they did work at the</p> <p>6 restaurant during this period?</p> <p>7 A. In this particular July 19th to</p> <p>8 25th, yes.</p> <p>9 Q. I believe you testified</p> <p>10 previously each of their respective</p> <p>11 positions. Do all of these individuals</p> <p>12 still work at the restaurant?</p> <p>13 A. Amaro, Lazero, I don't think so.</p> <p>14 Gonzalez, I don't think so.</p> <p>15 Q. Gonzalez, Amaro, and Abel?</p> <p>16 A. Carlos, I don't think so. No.</p> <p>17 Q. Pedro still works there?</p> <p>18 A. Yes.</p> <p>19 Q. Daniel still works there?</p> <p>20 A. Yes.</p> <p>21 Q. And Rami still works there?</p> <p>22 A. No. He is not.</p> <p>23 Q. Does Gonzalez still work there?</p> <p>24 A. Gonzalez was like part-time</p> <p>25 employee, not even employee. He comes to</p>	<p style="text-align: right;">Page 181</p> <p>1 N. VOLPER</p> <p>2 class list Exhibit 20, there are only two</p> <p>3 individuals listed who worked in the back</p> <p>4 of house in 2021; is that correct?</p> <p>5 A. (No verbal response.)</p> <p>6 Q. These two individuals started in</p> <p>7 2021 and August 2020 and who are current?</p> <p>8 A. I have to see the names</p> <p>9 otherwise --</p> <p>10 Q. Are there only two current</p> <p>11 back-of-house employees, correct, on this</p> <p>12 list?</p> <p>13 A. Yes, looks like only two.</p> <p>14 Q. You confirmed on Plaintiff 25</p> <p>15 that there were six individuals working in</p> <p>16 the back of house on this week alone,</p> <p>17 correct?</p> <p>18 A. As I mentioned before they</p> <p>19 worked but they are not employees. They</p> <p>20 are temporary. Woe had to call them. In</p> <p>21 the pandemic it was extremely difficult to</p> <p>22 find people.</p> <p>23 Q. According to the class list</p> <p>24 Exhibit 20, the restaurant had employed</p> <p>25 only eight individuals in the back of</p>

<p style="text-align: right;">Page 182</p> <p>1 N. VOLPER</p> <p>2 house since January of 2016; is that</p> <p>3 correct?</p> <p>4 A. Can you show me here?</p> <p>5 Q. Yes (indicating). There are</p> <p>6 only eight individuals.</p> <p>7 A. Yes.</p> <p>8 Q. Did the restaurant employ a chef</p> <p>9 named Nelson?</p> <p>10 A. Yes.</p> <p>11 Q. When did he work at the</p> <p>12 restaurant?</p> <p>13 A. Beginning.</p> <p>14 Q. Is he included on this list?</p> <p>15 A. Which list?</p> <p>16 Q. Exhibit 20.</p> <p>17 A. I have no idea.</p> <p>18 MR. SEGAL: Do you mean exhibit</p> <p>19 --</p> <p>20 MR. DiGIULIO: 20. There are no</p> <p>21 names on Exhibit 20. Let's move on.</p> <p>22 Q. Going back to the bank</p> <p>23 statements which is Exhibit 18, the bank</p> <p>24 statement?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 184</p> <p>1 N. VOLPER</p> <p>2 Q. Did he work as a chef?</p> <p>3 A. No. He doesn't work as a chef.</p> <p>4 We called him as help, to help us in</p> <p>5 kitchen.</p> <p>6 Q. He worked in the kitchen?</p> <p>7 A. Correct.</p> <p>8 Q. How long did he work for the</p> <p>9 restaurant?</p> <p>10 A. Maybe like -- I don't remember</p> <p>11 how long but not long.</p> <p>12 Q. Is this person Abel Mendoza</p> <p>13 included in Exhibit 20 on the class list</p> <p>14 as the back-of-house employee?</p> <p>15 A. No, because he was not employed.</p> <p>16 He was temporary worker to help us.</p> <p>17 During the pandemic we called lot of</p> <p>18 people just to help us.</p> <p>19 Q. Do the temporary back-of-house</p> <p>20 employees do the same work as the</p> <p>21 full-time employees?</p> <p>22 A. Same work?</p> <p>23 Q. Yes.</p> <p>24 A. There in the kitchen, you know,</p> <p>25 whatever we need they do. I don't know</p>
<p style="text-align: right;">Page 183</p> <p>1 N. VOLPER</p> <p>2 Q. If you go to D709, these are the</p> <p>3 bank statements for July of 2021, correct,</p> <p>4 for the restaurant?</p> <p>5 A. July 2021, that's correct.</p> <p>6 Q. If we go to D730 these are</p> <p>7 images of checks written from the</p> <p>8 restaurant?</p> <p>9 A. Correct.</p> <p>10 Q. I am going to point out to you</p> <p>11 specific checks.</p> <p>12 A. Please.</p> <p>13 Q. Abel Mendoza?</p> <p>14 A. Okay.</p> <p>15 Q. Is that his paycheck? Check No.</p> <p>16 11142. Do you see the check on the top</p> <p>17 left?</p> <p>18 A. Correct.</p> <p>19 Q. Is that his paycheck?</p> <p>20 A. This is temporary worker as</p> <p>21 well. We call them when we need him.</p> <p>22 Looks like this is pay out check.</p> <p>23 Q. And you paid him directly,</p> <p>24 correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 185</p> <p>1 N. VOLPER</p> <p>2 the same work or not, that's why we called</p> <p>3 them. As you know, during the pandemic</p> <p>4 everyone knew you cannot find people to</p> <p>5 work.</p> <p>6 MS. SCHULMAN: The temporary</p> <p>7 back-of-house employees, you called</p> <p>8 them when you are short of staff to</p> <p>9 fill in for the missing staff.</p> <p>10 THE WITNESS: Yes.</p> <p>11 MS. SCHULMAN: And the temporary</p> <p>12 front-of-house you called them to help</p> <p>13 when you were missing front-of-house</p> <p>14 staff?</p> <p>15 THE WITNESS: Correct.</p> <p>16 MS. SCHULMAN: So they are just</p> <p>17 filling in.</p> <p>18 THE WITNESS: Correct, so they</p> <p>19 can operate the business.</p> <p>20 Q. Do you pay these temporary</p> <p>21 workers directly?</p> <p>22 A. Yes. We issue checks directly.</p> <p>23 Q. I am going to show you a bank</p> <p>24 statement marked D859. It says</p> <p>25 December 2021. On the top left corner</p>

<p style="text-align: right;">Page 186</p> <p>1 N. VOLPER</p> <p>2 there is a check marked 9593 Vikash Patel.</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Who is Vikash Patel?</p> <p>6 A. Vikash Patel was the potential</p> <p>7 buyer for the restaurant like I mentioned</p> <p>8 before. We have agreement to take over</p> <p>9 the restaurant. He took certain period of</p> <p>10 time. He put deposit towards the</p> <p>11 transaction, the buyout. This is when I</p> <p>12 start to refund his money back.</p> <p>13 Q. This is document D540 from</p> <p>14 November of 2020 for the restaurant. Do</p> <p>15 you see that?</p> <p>16 A. Yes.</p> <p>17 Q. This is a check issued to</p> <p>18 Anthony Mendiola (ph). Number of the</p> <p>19 check is 10387. Who is Anthony Mendiola?</p> <p>20 A. He was working in the kitchen.</p> <p>21 Q. What was his position?</p> <p>22 A. Chef I think. I believe he was</p> <p>23 chef for small period of time.</p> <p>24 Q. Is he included on the class list</p> <p>25 Exhibit 20?</p>	<p style="text-align: right;">Page 188</p> <p>1 N. VOLPER</p> <p>2 A. That can be some kind of vendor</p> <p>3 because of the amount. I cannot -- maybe</p> <p>4 we paid because we need lot of repairs.</p> <p>5 That can be third-party contractor or</p> <p>6 something because of the amount.</p> <p>7 Q. We have D733 which is from</p> <p>8 July 2021. This is a check to Mitchell</p> <p>9 Sawyer 11229. Do you know who Mitchell</p> <p>10 Sawyer is?</p> <p>11 A. Yes, I know. He is handling the</p> <p>12 social media.</p> <p>13 Q. He handles your social media?</p> <p>14 A. Yes.</p> <p>15 MR. SEGAL: I have to take this</p> <p>16 call.</p> <p>17 (Whereupon, a short recess was</p> <p>18 taken.)</p> <p>19 MR. DiGIULIO: Back on the</p> <p>20 record.</p> <p>21 Q. This is page D723 which is from</p> <p>22 July of 2021. It is a check for Oliver</p> <p>23 Morales. Check 11060. Would is Oliver</p> <p>24 Morales?</p> <p>25 A. Independent contractor.</p>
<p style="text-align: right;">Page 187</p> <p>1 N. VOLPER</p> <p>2 A. I have no names here so I</p> <p>3 cannot --</p> <p>4 Q. There is only one chef lited,</p> <p>5 correct?</p> <p>6 A. That can be him or somebody</p> <p>7 else. When I have no names, I cannot</p> <p>8 confirm it is on the list or not.</p> <p>9 Q. This is Defendant's</p> <p>10 Exhibit 8630, bank statement from December</p> <p>11 of 2021. Name of the check is Florentino</p> <p>12 Matta (ph). Check No. 11811. Who is</p> <p>13 Florentino Matta?</p> <p>14 A. I believe that's also a</p> <p>15 temporary worker because of the amount.</p> <p>16 Q. Did he work in the back of</p> <p>17 house?</p> <p>18 A. He was just called to help us,</p> <p>19 yes.</p> <p>20 Q. Let me go to page Defendant's</p> <p>21 Exhibit 860, also December of 2021. Name</p> <p>22 on this check is Jermaine Gambiagi (ph),</p> <p>23 Check No. 11712.</p> <p>24 A. Can I take a look?</p> <p>25 Q. Please.</p>	<p style="text-align: right;">Page 189</p> <p>1 N. VOLPER</p> <p>2 Q. What does he for the restaurant?</p> <p>3 A. Photos.</p> <p>4 Q. He takes photos?</p> <p>5 A. Yes.</p> <p>6 Q. D866. This is from December. I</p> <p>7 am going to refer the witness to D866</p> <p>8 which is a bank statements from</p> <p>9 December 2021. This is a check to Richard</p> <p>10 Francisco Garcia. Check No. 11844. Who</p> <p>11 is Richard Francisco Garcia?</p> <p>12 A. Which one?</p> <p>13 Q. Richard Francisco Garcia.</p> <p>14 A. Looks like some kind of vendor.</p> <p>15 Can be construction.</p> <p>16 Q. Do you see 4 in the bottom</p> <p>17 corner, dishwasher?</p> <p>18 A. Okay.</p> <p>19 Q. Is Richard Francisco Garcia a</p> <p>20 dishwasher that worked at the restaurant?</p> <p>21 A. We may call temporary, yes. I</p> <p>22 cannot see the name. What is that --</p> <p>23 okay.</p> <p>24 Q. Last one is D540 is from</p> <p>25 November 2020. Check is to Ryan Kemp.</p>

<p style="text-align: right;">Page 190</p> <p>1 N. VOLPER</p> <p>2 Check No. 10386.</p> <p>3 A. He was temporary chef.</p> <p>4 Q. How long did he work for the</p> <p>5 restaurant?</p> <p>6 A. For a few months.</p> <p>7 Q. Before 2016 did the restaurant</p> <p>8 take any steps to ensure that the pay</p> <p>9 practices of the restaurant were in</p> <p>10 compliance with federal and New York law?</p> <p>11 A. Before 2016?</p> <p>12 Q. Yes.</p> <p>13 A. If we complied with federal?</p> <p>14 Q. Did the restaurant take any</p> <p>15 steps to ensure that the restaurant's pay</p> <p>16 practices were in compliance with New York</p> <p>17 and the federal wage law?</p> <p>18 A. Which period of time?</p> <p>19 Q. Before 2016?</p> <p>20 A. I guess we pay by 1099. I don't</p> <p>21 know if that counts.</p> <p>22 Q. I am asking about affirmative</p> <p>23 steps that you or the people who worked</p> <p>24 for the restaurant took?</p> <p>25 A. I'm not familiar with all the</p>	<p style="text-align: right;">Page 192</p> <p>1 N. VOLPER</p> <p>2 play poker. I play basketball. I go on</p> <p>3 vacation --</p> <p>4 MS. SCHULMAN: What did you do</p> <p>5 for a living before you opened the</p> <p>6 restaurant? Can I just ask, what did</p> <p>7 you do for a living before you opened</p> <p>8 212 Steakhouse?</p> <p>9 THE WITNESS: I played poker.</p> <p>10 MS. SCHULMAN: Was that your</p> <p>11 main source of income?</p> <p>12 THE WITNESS: Yes.</p> <p>13 MS. SCHULMAN: Did you have any</p> <p>14 other business before you opened 212</p> <p>15 Steakhouse?</p> <p>16 THE WITNESS: I have import</p> <p>17 export business in the past. I have</p> <p>18 e-commerce business in the past.</p> <p>19 Q. Before you opened 212 Steakhouse</p> <p>20 did you ever have employees before?</p> <p>21 A. Not really, no.</p> <p>22 Q. Are you aware that most hourly</p> <p>23 workers have to be paid time and a half</p> <p>24 for hours worked?</p> <p>25 A. Yes, sir. Now I am aware of</p>
<p style="text-align: right;">Page 191</p> <p>1 N. VOLPER</p> <p>2 restaurant laws, labor laws. I can't</p> <p>3 answer correctly on that question. I will</p> <p>4 tell you what has been done.</p> <p>5 Q. Did you consult with anyone to</p> <p>6 determine whether the restaurant's pay</p> <p>7 practices were in compliance with the law?</p> <p>8 A. No.</p> <p>9 Q. Did you do any research on your</p> <p>10 own to determine whether the pay practices</p> <p>11 of the restaurant were in compliance?</p> <p>12 A. No. That's my first restaurant</p> <p>13 so not much experience there.</p> <p>14 Q. Before the restaurant what did</p> <p>15 you do?</p> <p>16 A. Before the restaurant?</p> <p>17 Q. Yes.</p> <p>18 A. Like I do many different things</p> <p>19 which is -- how is this relevant to the</p> <p>20 labor department lawsuit?</p> <p>21 MS. SCHULMAN: You have to</p> <p>22 answer the question.</p> <p>23 MR. SEGAL: Objection, but you</p> <p>24 can answer.</p> <p>25 A. I do many different things. I</p>	<p style="text-align: right;">Page 193</p> <p>1 N. VOLPER</p> <p>2 that, yes.</p> <p>3 Q. When did you become aware of</p> <p>4 that?</p> <p>5 A. Being -- I cannot tell you</p> <p>6 exactly the date and time. Sorry.</p> <p>7 Q. Did you know that in 2016?</p> <p>8 A. I cannot tell you the. Most</p> <p>9 likely I don't, because we used 1099 form</p> <p>10 so.</p> <p>11 Q. Did the restaurant ever seek</p> <p>12 legal advice about the requirements for</p> <p>13 paying tipped employees pursuant to a tip</p> <p>14 credit?</p> <p>15 A. No.</p> <p>16 Q. Has the restaurant been</p> <p>17 investigated by the state or federal</p> <p>18 department of labor?</p> <p>19 A. We were audited but not</p> <p>20 investigate. Investigate is like</p> <p>21 basically -- I don't know how to determine</p> <p>22 the word investigate.</p> <p>23 Q. You were audited by the tax</p> <p>24 authority?</p> <p>25 A. By the department of labor.</p>

<p style="text-align: right;">Page 194</p> <p>1 N. VOLPER</p> <p>2 Q. Federal or state?</p> <p>3 A. New York State.</p> <p>4 Q. New York State?</p> <p>5 A. Correct.</p> <p>6 Q. What was the outcome of that</p> <p>7 investigation?</p> <p>8 A. Outcome?</p> <p>9 Q. Yes.</p> <p>10 A. Like, they asked us to provide</p> <p>11 all the documents. They gave me</p> <p>12 penalties.</p> <p>13 MS. SCHULMAN: When was that</p> <p>14 audit?</p> <p>15 THE WITNESS: This was like</p> <p>16 before the pandemic.</p> <p>17 MS. SCHULMAN: Do you have any</p> <p>18 documents relating to that audit?</p> <p>19 THE WITNESS: Do I have</p> <p>20 documents -- yes.</p> <p>21 MS. SCHULMAN: What did you have</p> <p>22 to pay penalties for?</p> <p>23 THE WITNESS: I don't know. I</p> <p>24 know I have to pay penalty. Exactly</p> <p>25 for what --</p>	<p style="text-align: right;">Page 196</p> <p>1 N. VOLPER</p> <p>2 Q. That was filed against you in</p> <p>3 December of 2018, correct?</p> <p>4 A. Yes.</p> <p>5 Q. Is that when you first became</p> <p>6 aware of Mr. Quizphi's allegations?</p> <p>7 A. Little bit later because it</p> <p>8 takes time to be served.</p> <p>9 Q. What did you do in response to</p> <p>10 these allegations?</p> <p>11 A. What I did?</p> <p>12 Q. Yes.</p> <p>13 A. I mean, I hired a lawyer.</p> <p>14 Q. Did you change the pay practices</p> <p>15 of the restaurant at all?</p> <p>16 A. Yes.</p> <p>17 Q. How did you change them?</p> <p>18 A. Payroll and payroll records and</p> <p>19 -- et cetera.</p> <p>20 Q. Before this lawsuit?</p> <p>21 A. Before the lawsuit, yes. No, I</p> <p>22 think it was maybe after the lawsuit. I</p> <p>23 don't remember, but maybe after the</p> <p>24 lawsuit.</p> <p>25 Q. I am a little confused by what</p>
<p style="text-align: right;">Page 195</p> <p>1 N. VOLPER</p> <p>2 MS. SCHULMAN: Do you recall</p> <p>3 what violations --</p> <p>4 THE WITNESS: I don't know. I</p> <p>5 don't know. It was some kind of</p> <p>6 violation.</p> <p>7 Q. Prior to this lawsuit has the</p> <p>8 restaurant of been sued?</p> <p>9 A. Yes.</p> <p>10 Q. How many times?</p> <p>11 A. Like, we have been sued by</p> <p>12 vendors few times. We have a very tough</p> <p>13 time in the beginning so we lost a lot of</p> <p>14 money. We have been sued by employees.</p> <p>15 Obviously now is another case.</p> <p>16 Q. Are you aware of the lawsuit</p> <p>17 Luis Quizphi verses 212 Steakhouse?</p> <p>18 A. Yes, sir.</p> <p>19 (Whereupon, complaint was marked</p> <p>20 as Defendant's Exhibit 21 for</p> <p>21 identification as of this date by the</p> <p>22 Reporter.)</p> <p>23 Q. Is this the lawsuit you are</p> <p>24 referring to in this complaint?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 197</p> <p>1 N. VOLPER</p> <p>2 changed after this lawsuit. You said the</p> <p>3 payroll records. How did the payroll</p> <p>4 records change?</p> <p>5 A. How they changed?</p> <p>6 Q. Yes.</p> <p>7 A. Well, after I was aware what I</p> <p>8 need to be done, I start to do it</p> <p>9 correctly.</p> <p>10 MS. SCHULMAN: What specifically</p> <p>11 did you change about your pay</p> <p>12 practices in response to this lawsuit?</p> <p>13 THE WITNESS: I mean I stopped</p> <p>14 to, you know -- I put everybody on</p> <p>15 the payroll.</p> <p>16 MS. SCHULMAN: It was in</p> <p>17 response to that lawsuit that you put</p> <p>18 everyone on payroll?</p> <p>19 THE WITNESS: Yeah, afterwards I</p> <p>20 was aware that I made mistake here.</p> <p>21 MS. SCHULMAN: Did you make any</p> <p>22 changes with respect to your payroll</p> <p>23 practices in response to this lawsuit</p> <p>24 other than putting the workers on</p> <p>25 W-2s?</p>

<p style="text-align: right;">Page 198</p> <p>1 N. VOLPER</p> <p>2 THE WITNESS: As far as I</p> <p>3 remember, that was like pretty much --</p> <p>4 pretty much it.</p> <p>5 Q. How did the case resolve?</p> <p>6 A. We settled.</p> <p>7 (Whereupon, D1454 to D1462 was</p> <p>8 marked as Defendant's Exhibit 22 for</p> <p>9 identification as of this date by the</p> <p>10 Reporter.)</p> <p>11 Q. This is not Bates stamped but</p> <p>12 they are marked D1454 through 1462. Are</p> <p>13 these time records from Mr. Quizphi?</p> <p>14 A. Yes.</p> <p>15 Q. Did you produce these records in</p> <p>16 the prior lawsuit with Mr. Quizphi?</p> <p>17 A. I believe they are documents</p> <p>18 requested.</p> <p>19 Q. Did you also produce them during</p> <p>20 the lawsuit with Mr. Quizphi back in 2018?</p> <p>21 A. During the lawsuit --</p> <p>22 MR. SEGAL: In other words, did</p> <p>23 you provide this information to Mr.</p> <p>24 Quizphi when they asked for demands</p> <p>25 related to it? Was this provided to</p>	<p style="text-align: right;">Page 200</p> <p>1 N. VOLPER</p> <p>2 Is this the complaint filed against you by</p> <p>3 Mr. De La Luis Flores?</p> <p>4 A. Correct.</p> <p>5 Q. And how did this case resolve?</p> <p>6 A. It was settled.</p> <p>7 Q. Did you change any of the pay</p> <p>8 practices at the restaurant as a result of</p> <p>9 this lawsuit?</p> <p>10 A. I don't remember in this</p> <p>11 particular case.</p> <p>12 (Whereupon, D1426 to D1453 was</p> <p>13 marked as Defendant's Exhibit 24 for</p> <p>14 identification as of this date by the</p> <p>15 Reporter.)</p> <p>16 Q. These are documents marked</p> <p>17 Exhibit 24. They are produced by the</p> <p>18 defendants in this litigation that were</p> <p>19 not Bates. We Bates stamped them D1426</p> <p>20 through 1453. Are these the time records</p> <p>21 for Mr. De La Luz Flores?</p> <p>22 A. Yes. Looks like time records,</p> <p>23 yes.</p> <p>24 Q. And did you produce these</p> <p>25 records to that plaintiff in that lawsuit?</p>
<p style="text-align: right;">Page 199</p> <p>1 N. VOLPER</p> <p>2 the plaintiff in the other lawsuit?</p> <p>3 THE WITNESS: Yes.</p> <p>4 Q. Did you produce anything else to</p> <p>5 the plaintiff in the prior lawsuit besides</p> <p>6 these records?</p> <p>7 A. No. Whatever documents</p> <p>8 required.</p> <p>9 Q. Did you produce anything else?</p> <p>10 A. I don't remember. Whatever they</p> <p>11 required, we produced.</p> <p>12 Q. Did the plaintiff in the other</p> <p>13 lawsuit produce any records to you?</p> <p>14 A. I don't believe we required any</p> <p>15 documents as far as I remember.</p> <p>16 (Whereupon, complaint was marked</p> <p>17 as Defendant's Exhibit 23 for</p> <p>18 identification as of this date by the</p> <p>19 Reporter.)</p> <p>20 Q. Are you aware of the lawsuit</p> <p>21 Julio De La Luz Flores verses 212</p> <p>22 Steakhouse?</p> <p>23 A. Yes.</p> <p>24 Q. This is the complaint filed in</p> <p>25 New York Court County Supreme, Exhibit 23.</p>	<p style="text-align: right;">Page 201</p> <p>1 N. VOLPER</p> <p>2 A. Correct. Yes, we did.</p> <p>3 Q. Did you produce any other</p> <p>4 records in that lawsuit with Mr. De La Luz</p> <p>5 Flores?</p> <p>6 A. We may, but I still don't</p> <p>7 remember. I don't remember what else was</p> <p>8 produced.</p> <p>9 Q. Did you produce Mr. De La Luz</p> <p>10 Flores's wage statements in that lawsuit?</p> <p>11 A. Wage statements -- I don't</p> <p>12 remember.</p> <p>13 Q. Pay stubs?</p> <p>14 A. I don't remember.</p> <p>15 Q. You don't remember?</p> <p>16 A. No.</p> <p>17 Q. Did Mr. De La Luz Flores produce</p> <p>18 any records to you in that lawsuit?</p> <p>19 A. No.</p> <p>20 Q. Besides these two lawsuits, are</p> <p>21 you aware of any complaints that any</p> <p>22 employee made about not being paid</p> <p>23 lawfully at the restaurant?</p> <p>24 A. I don't believe so.</p> <p>25 Q. At the beginning of this case</p>

<p style="text-align: right;">Page 202</p> <p>1 N. VOLPER</p> <p>2 you asserted a counterclaim against Nino</p> <p>3 Martinenko in which you blamed her for the</p> <p>4 restaurant shutting down; is that correct?</p> <p>5 A. Correct.</p> <p>6 Q. And you subsequently withdrew</p> <p>7 that claim, correct?</p> <p>8 A. I don't understand that word.</p> <p>9 Q. Did you drop that claim?</p> <p>10 A. Yes.</p> <p>11 Q. Have you dropped that claim</p> <p>12 against Nino Martinenko?</p> <p>13 A. Yes.</p> <p>14 MR. DiGIULIO: Let's take five</p> <p>15 minutes.</p> <p>16 (Whereupon, a short recess was</p> <p>17 taken.)</p> <p>18 MR. DiGIULIO: Back on the</p> <p>19 record.</p> <p>20 Q. In the two lawsuits that we</p> <p>21 talked about, were you deposed in either</p> <p>22 of them?</p> <p>23 A. Deposed?</p> <p>24 Q. Yes.</p> <p>25 A. I believe so, yes.</p>	<p style="text-align: right;">Page 204</p> <p>1 N. VOLPER</p> <p>2 Q. The restaurant used them from</p> <p>3 the beginning?</p> <p>4 A. Yes. We used from the</p> <p>5 beginning. Some kind of services,</p> <p>6 bartender something when we have events we</p> <p>7 use.</p> <p>8 Q. Do you know Imran's address?</p> <p>9 A. No. I know he recently moved</p> <p>10 but I don't know his address.</p> <p>11 Q. When you collected documents for</p> <p>12 this litigation, did you ask Imran to give</p> <p>13 you any documents?</p> <p>14 MR. SEGAL: Can I ask a</p> <p>15 different question?</p> <p>16 MR. DiGIULIO: No. Let him</p> <p>17 finish.</p> <p>18 A. I don't know. I was not in very</p> <p>19 good stage, you know. I can't remember.</p> <p>20 Q. Did Imran help you collect any</p> <p>21 documents for this litigation?</p> <p>22 A. I don't remember.</p> <p>23 Q. You don't remember?</p> <p>24 A. I don't want to go through my</p> <p>25 medical records but -- I am still under --</p>
<p style="text-align: right;">Page 203</p> <p>1 N. VOLPER</p> <p>2 MR. SEGAL: I don't think so. I</p> <p>3 am trying to think. Who were the</p> <p>4 attorneys?</p> <p>5 MS. SCHULMAN: It is on the --</p> <p>6 (Whereupon, an off-the-record</p> <p>7 discussion was held.)</p> <p>8 Q. For the record, were you deposed</p> <p>9 in either of the previous lawsuits we</p> <p>10 discussed?</p> <p>11 A. No.</p> <p>12 Q. When you were discussing the</p> <p>13 temporary workers the restaurant used, was</p> <p>14 that in terms of time period only after</p> <p>15 the COVID that the restaurant used</p> <p>16 temporary workers?</p> <p>17 A. You mean during the COVID?</p> <p>18 Q. During COVID.</p> <p>19 A. During COVID, after the COVID.</p> <p>20 We are still COVID so --</p> <p>21 Q. Prior to March 2020 did the</p> <p>22 restaurant use temporary workers?</p> <p>23 A. Yes.</p> <p>24 Q. Yes, you did use them?</p> <p>25 A. Yes, yes.</p>	<p style="text-align: right;">Page 205</p> <p>1 N. VOLPER</p> <p>2 Q. This is Exhibit 2. I am going</p> <p>3 to show you D1216. This is Nino</p> <p>4 Martinenko's time records.</p> <p>5 A. Okay.</p> <p>6 Q. If you see on February 7th of</p> <p>7 2016, Nino Martinenko clocked in at</p> <p>8 11:18 a.m. Is that right?</p> <p>9 A. That's in the morning, correct?</p> <p>10 Q. Yes. That would be a time when</p> <p>11 the plaintiff Nino Martinenko worked the</p> <p>12 lunch shift, correct?</p> <p>13 A. Correct.</p> <p>14 Q. When the time record shows</p> <p>15 front-of-house person clocking in in the</p> <p>16 morning, does that mean there was a lunch</p> <p>17 shift that day?</p> <p>18 A. That's correct. The way I see</p> <p>19 it here, nobody like counted the lunch</p> <p>20 breaks.</p> <p>21 Q. February 21st, same page you can</p> <p>22 see she clocked in at 11:14 a.m., clocked</p> <p>23 out at 3:03, clocked back in at 3:12 p.m.</p> <p>24 A. Okay. That maybe only one day.</p> <p>25 In general.</p>

<p style="text-align: right;">Page 206</p> <p>1 N. VOLPER</p> <p>2 MR. DiGIULIO: We are done.</p> <p>3 Thank you.</p> <p>4 MR. SEGAL: Couple of quick</p> <p>5 questions.</p> <p>6 EXAMINATION BY</p> <p>7 MR. SEGAL:</p> <p>8 Q. You mentioned earlier today that</p> <p>9 the employees had a break of thirty</p> <p>10 minutes. Was that their meal break or the</p> <p>11 meal break was in addition to that other</p> <p>12 thirty minute break?</p> <p>13 A. No. Meal, they usually -- when</p> <p>14 they eat they don't -- it is not like a</p> <p>15 meal break. They usually like during the</p> <p>16 shifts, they take -- in between the lunch</p> <p>17 shift and dinner shift they take a break.</p> <p>18 They go outside, have coffee, whatever</p> <p>19 they decide to do.</p> <p>20 Q. But that's in addition to the</p> <p>21 thirty minute break; is that correct?</p> <p>22 A. Correct.</p> <p>23 Q. Imran was not an employee of the</p> <p>24 restaurant, was he?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 208</p> <p>1 N. VOLPER</p> <p>2 A. I believe so, yes.</p> <p>3 Q. The tip records that you</p> <p>4 provided to the plaintiffs and that we</p> <p>5 went through today, those were only the</p> <p>6 credit card tips; is that correct?</p> <p>7 A. Correct.</p> <p>8 Q. And the responsibility of the</p> <p>9 employees is to tell you what cash tips</p> <p>10 they make on a daily basis or at the end</p> <p>11 of the week; is that correct?</p> <p>12 MS. SCHULMAN: Objection.</p> <p>13 Q. You can answer.</p> <p>14 A. That's correct. They need to</p> <p>15 fill up, I believe some kind of form.</p> <p>16 Q. You don't have the amounts that</p> <p>17 they made in cash; is that correct?</p> <p>18 A. I don't remember. They never</p> <p>19 reported to me.</p> <p>20 Q. Isn't it true that if your</p> <p>21 minimum wage somehow did not equal, the</p> <p>22 tip minimum wage somehow did not equal the</p> <p>23 correct minimum wage because the credit</p> <p>24 card and the tip minimum wage did not</p> <p>25 equal the regular minimum wage, it still</p>
<p style="text-align: right;">Page 207</p> <p>1 N. VOLPER</p> <p>2 Q. Was he ever paid by the</p> <p>3 restaurant?</p> <p>4 A. No.</p> <p>5 Q. You mentioned that he helped you</p> <p>6 with some things in the restaurant. Was</p> <p>7 that the extent of his involvement in the</p> <p>8 restaurant?</p> <p>9 A. Correct.</p> <p>10 Q. You mentioned that the</p> <p>11 restaurant was open seven days</p> <p>12 approximately from 12:00 to 11:00?</p> <p>13 A. Correct.</p> <p>14 Q. Just as Nino Martinenko checked</p> <p>15 out at 3:00, do other servers, some of the</p> <p>16 people at lunch leave prior to the dinner</p> <p>17 shift?</p> <p>18 A. Yes. Pretty much that's like a</p> <p>19 procedure. They want to take some break</p> <p>20 between the lunch and the dinner shift,</p> <p>21 yes.</p> <p>22 Q. The accountant firm listed on</p> <p>23 the tax returns called Tax Zone, is that</p> <p>24 the same firm as Crow? Did they change</p> <p>25 their name to Crow?</p>	<p style="text-align: right;">Page 209</p> <p>1 N. VOLPER</p> <p>2 might have if you had the cash tips; isn't</p> <p>3 that true?</p> <p>4 A. True.</p> <p>5 Q. When you opened up the</p> <p>6 restaurant you said it was your first</p> <p>7 endeavor in the restaurant hospitality</p> <p>8 industry?</p> <p>9 A. Yes, sir.</p> <p>10 Q. You hired accountants, correct?</p> <p>11 A. Correct.</p> <p>12 Q. Did you rely on those</p> <p>13 accountants to provide you information</p> <p>14 related to the FLSA and the New York labor</p> <p>15 laws?</p> <p>16 A. Yes.</p> <p>17 Q. Did you believe that they were</p> <p>18 following those labor laws when they</p> <p>19 reported wages and salary the way they did</p> <p>20 to you?</p> <p>21 A. I believe. I was not, you know,</p> <p>22 aware of many details.</p> <p>23 Q. As you stated earlier today, you</p> <p>24 did have two prior lawsuits and you had a</p> <p>25 labor audit. At any time prior to those</p>

<p style="text-align: right;">Page 210</p> <p>1 N. VOLPER</p> <p>2 actions and audit and thereafter, have you</p> <p>3 ever willfully tried to violate the FLSA</p> <p>4 or the New York labor laws?</p> <p>5 MR. SEGAL: Objection.</p> <p>6 Q. You can answer.</p> <p>7 A. Can you explain wilfully?</p> <p>8 Q. Wilfully means on purpose to</p> <p>9 screw the employees?</p> <p>10 A. No, no.</p> <p>11 Q. In street language?</p> <p>12 A. No.</p> <p>13 Q. You mentioned throughout your</p> <p>14 deposition testimony today that you</p> <p>15 thought, when counsel was asking you about</p> <p>16 personnel files and records, you indicated</p> <p>17 that you thought you might have some in</p> <p>18 the office but isn't it true that you</p> <p>19 searched all your areas in the office as</p> <p>20 well as the restaurant for records when I</p> <p>21 requested them?</p> <p>22 MR. SEGAL: Objection.</p> <p>23 A. Yes, true.</p> <p>24 Q. Do you believe there are any</p> <p>25 files or records that you did not provide</p>	<p style="text-align: right;">Page 212</p> <p>1 N. VOLPER</p> <p>2 Q. You can answer.</p> <p>3 A. Very possible, yes.</p> <p>4 Q. Plaintiff had some papers that</p> <p>5 she produced today, correct?</p> <p>6 A. Correct.</p> <p>7 Q. Is it possible that plaintiff</p> <p>8 destroyed or took away your other files?</p> <p>9 MS. SCHULMAN: Objection.</p> <p>10 A. Possible.</p> <p>11 MR. SEGAL: No further</p> <p>12 questions.</p> <p>13 EXAMINATION BY</p> <p>14 MS. SCHULMAN:</p> <p>15 Q. You testified you relied on the</p> <p>16 accountant you had when you first opened</p> <p>17 the restaurant. Who was that accountant?</p> <p>18 A. I assume it was -- because when</p> <p>19 I look now the tax returns, I think it was</p> <p>20 the same people but different name.</p> <p>21 Q. You have always used Ebed as the</p> <p>22 restaurant's accountant?</p> <p>23 A. Yeah. Ebed or Ali. They</p> <p>24 changed companies I guess.</p> <p>25 Q. Did you have any communications</p>
<p style="text-align: right;">Page 211</p> <p>1 N. VOLPER</p> <p>2 that are in your possession?</p> <p>3 MR. DiGIULIO: Objection.</p> <p>4 A. I don't believe so.</p> <p>5 MR. SEGAL: What is the</p> <p>6 objection? Leading?</p> <p>7 MR. DiGIULIO: Form.</p> <p>8 Q. Did you ever get trained in the</p> <p>9 POS system?</p> <p>10 A. No.</p> <p>11 Q. Do you think you know all its</p> <p>12 features?</p> <p>13 A. I don't believe so because they</p> <p>14 are constantly updated, all these</p> <p>15 features.</p> <p>16 Q. You testified that you gave</p> <p>17 access to the office via checkbooks to</p> <p>18 employees; is that correct?</p> <p>19 A. Correct.</p> <p>20 Q. And you stated that you can't</p> <p>21 find a lot of your files; is that correct?</p> <p>22 A. Correct.</p> <p>23 Q. Is it possible your employees</p> <p>24 took these files?</p> <p>25 MS. SCHULMAN: Objection.</p>	<p style="text-align: right;">Page 213</p> <p>1 N. VOLPER</p> <p>2 with those accountants about the</p> <p>3 requirements of how to pay your employees?</p> <p>4 A. Like I mean they ask me, you</p> <p>5 know, they ask me like -- I have to</p> <p>6 provide like employees' names, Social</p> <p>7 Security, address, date of birth. They</p> <p>8 request for some information that I have</p> <p>9 to provide to be put into the payroll</p> <p>10 system.</p> <p>11 Q. Did they ever give you any other</p> <p>12 information about the legal requirements</p> <p>13 with respect to your employees?</p> <p>14 A. No, no.</p> <p>15 MS. SCHULMAN: Thank you.</p> <p>16 THE WITNESS: Thank you.</p> <p>17 [TIME NOTED: 5:45 p.m.]</p> <p>18 _____</p> <p style="text-align: center;">NIKOLAY VOLPER</p> <p>19</p> <p>20</p> <p>21 Subscribed and sworn to before me</p> <p>22 this __ day of _____, 2022.</p> <p>23 _____</p> <p style="text-align: center;">Notary Public</p> <p>24</p> <p>25</p>